

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BEFORE THE HONORABLE LARRY R. HICKS, DISTRICT JUDGE

ORACLE USA, INC., a Colorado :
corporation; ORACLE AMERICA, :
INC., a Delaware corporation; :
and ORACLE INTERNATIONAL : No. 2:10-cv-0106-LRH-PAL
CORPORATION, a California :
corporation, :
:
Plaintiffs, :
:
vs. :
:
RIMINI STREET, INC., a Nevada :
corporation; and SETH RAVIN, :
an individual, :
:
Defendants. :
:

TRANSCRIPT OF JURY TRIAL - DAY 3
(Pages 264 through 491)

September 16, 2015

Las Vegas, Nevada

Court Reporter: Donna Davidson, RDR, CRR, CCR 318
Certified Realtime Reporter
400 South Virginia Street
Reno, Nevada 89501
(775) 329-0132

A P P E A R A N C E S

FOR THE PLAINTIFFS:

BOIES, SCHILLER & FLEXNER LLP
KIERAN P. RINGGENBERG
1999 Harrison Street, Suite 900
Oakland, California 94612
(510) 874-1000
Fax: (510) 874-1460
kringgenberg@bsfllp.com

BOIES, SCHILLER & FLEXNER LLP
RICHARD J. POCKER
300 South Fourth Street, Suite 800
Las Vegas, Nevada 89101
(702) 382-7300
Fax: (702) 382-2755
rpocker@bsfllp.com

BOIES, SCHILLER & FLEXNER LLP
WILLIAM A. ISAACSON
KAREN L. DUNN
5301 Wisconsin Avenue, NW
Washington, DC 20015
(202) 237-2727
Fax: (202) 237-6131
wisaacson@bsfllp.com
kdunn@bsfllp.com

MORGAN LEWIS & BOCKIUS LLP
THOMAS S. HIXSON
NITIN JINDAL
JOHN A. POLITO
One Market, Spear Street Tower
San Francisco, California 94105
(415) 442-1000
Fax: (415) 442-1001
thomas.hixson@morganlewis.com
nitin.jindal@morganlewis.com
john.polito@morganlewis.com

JAMES C. MAROULIS
DORIAN E. DALEY
Oracle Corporation
500 Oracle Parkway
Redwood City, California 94070
(650) 506-4846
jim.maroulis@oracle.com
dorian.daley@oracle.com

1 LAS VEGAS, NEVADA, SEPTEMBER 16, 2015, 8:01 A.M.

2 --oOo--

3 P R O C E E D I N G S

4
5 (Outside the presence of the jury.)

6 COURTROOM ADMINISTRATOR: Please rise.

7 THE COURT: Good morning. Have a seat, please.

8 The record will show that we're in open court,
9 and the parties and counsel are present and prepared to go
10 forward. We do not have the jury present.

11 I did want to inform counsel concerning the
12 objection raised to paragraph 34 of the answer to the
13 second amended complaint, which I construed essentially as
14 an objection based upon context, I do feel that paragraph
15 33 would also be material and relevant to the issue and
16 certainly to the examination of Mr. Ravin, and I leave it
17 to counsel as to how they want to approach that.

18 The exhibit that was used showed 34. If either
19 party desires to -- plaintiff wants to substitute that with
20 an exhibit that shows 33 and 34, or if they just want to
21 leave 34 stand as it is, and defense can develop 33 as a
22 separate and independent paragraph, but I would allow it
23 either way. It's up to counsel.

24 MR. ISAACSON: We'll save one piece of paper and
25 substitute and put them both together, Your Honor.

1 THE COURT: All right.

2 MR. ISAACSON: So we'll substitute for 5332.

3 And then you may recall that yesterday I showed
4 him the same paragraph from about a year later, that was
5 PTX 1482D. I didn't move to admit that, but I would move
6 to admit it and, again, add paragraph 33 to that, which --

7 THE COURT: I would grant that.

8 MR. ISAACSON: -- we've identified other than
9 the date.

10 MR. STRAND: Your Honor --

11 THE COURT: Yes.

12 MR. STRAND: At the risk of treading where I
13 shouldn't --

14 THE COURT: No.

15 MR. STRAND: Yesterday we had also suggested
16 that paragraph 60 out of the corresponding allegation of
17 the complaint was also relevant for context. Has Your
18 Honor had an opportunity to look at that?

19 THE COURT: I didn't look at it. I reviewed it
20 quickly, but I didn't look at it with the thought in mind
21 should this go in as well. So I'll do that.

22 MR. STRAND: Okay. Thank you very much, Your
23 Honor. We'll get you that -- we'll get you that pulled out
24 of the complaint and get that to you today.

25 THE COURT: I have it in my chambers.

1 COURTROOM ADMINISTRATOR: So for clarification
2 of the clerk, what number exhibit will that be?

3 MR. ISAACSON: I would appreciate if Your Honor
4 would look at that paragraph because we don't think it adds
5 to the context.

6 THE COURT: I will look at it. I'll let you
7 know.

8 All right. Let's -- Madam Clerk, you had a
9 question.

10 COURTROOM ADMINISTRATOR: Yeah, I just need to
11 know which --

12 MR. ISAACSON: It will be their exhibit number
13 so I don't know.

14 So for ours, the two exhibits, we're going to
15 substitute for 5332, and we've moved for 1482D, and we'll
16 give a correct copy.

17 And they've moved for paragraph 60 of their
18 complaint, and that would be their exhibit number. So I
19 don't know what exhibit number that would be.

20 MR. WEBB: 3011, I believe. Is that right?
21 3011 for --

22 MR. ISAACSON: And, Your Honor, just before the
23 jury comes in, at some point during this examination we're
24 going to want to start talking about TomorrowNow issues.
25 And in talking to defense counsel, we thought it might be

1 more efficient if we took that up with Your Honor at the
2 first break as opposed to me beginning some questions,
3 objections, and going to sidebar.

4 THE COURT: That sounds like it works to me.
5 Mr. Webb?

6 MR. WEBB: Yes, that's what we would like.

7 THE COURT: All right.

8 MR. WEBB: Thank you.

9 THE COURT: All right. That will be the plan.
10 That being stated, let's bring in the jury,
11 please.

12 COURTROOM ADMINISTRATOR: Yes, Your Honor.

13 (Jurors enter the courtroom at 8:06 a.m.)

14 THE COURT: Good morning. Have a seat, please.

15 All right. Ladies and gentlemen, we just had a
16 brief matter I needed to address with counsel which is why
17 it took a couple minutes to bring you in.

18 The record will show we're in open court. The
19 parties and counsel are present, the jury is present. I
20 welcome you here this morning and hope you had a restful
21 night.

22 And we're in the course of direct examination of
23 Mr. Ravin. And, Mr. Isaacson, you can continue.

24 MR. ISAACSON: Thank you, Your Honor.

25 I decided to start out easily for Matt, PTX

1 No. 1, which will be the first exhibit in your binder.
2 It's also going on your screen. It's also been preadmitted
3 so we can see it on the screen.

4 And, Matt, can you blow up the middle so we can
5 see that email there.

6 SETH RAVIN

7 recalled as a witness on behalf of the
8 Plaintiffs, having been previously sworn,
9 was examined and testified as follows:

10 DIRECT EXAMINATION RESUMED

11 BY MR. ISAACSON:

12 Q. This email is very small print for who it's from and
13 to, but this is an email from that vice-president,
14 Mr. Chiu, to you, Mr. Ravin. This is on March 30th, 2006.

15 Mr. Chiu writes to you, "Yes. Dan's the man" --
16 that's Dan Slarve; is that right?

17 A. Yes.

18 Q. One of your vice-presidents?

19 A. Yes.

20 Q. And he found the most "recent development," and he
21 cites a website, edelivery.oracle.com.

22 And he says, "They'll start putting any
23 available patches that come out on that public portal for
24 download. The portal asks for some basic information?"

25 He says what that is, and then goes on to say,

1 "It does not 'check' the info entered against any license
2 agreement. So basically it's an open door to their
3 software."

4 Now, that's referring to Oracle software; right?

5 A. That would be correct, yes.

6 Q. All right. Now, on top of that, he says in the next
7 paragraph, "Dan found that they have also made license keys
8 available for Siebel, PeopleSoft and JD Edwards software."

9 "License keys" refers to keys that are necessary
10 to -- in order to access certain software; correct?

11 A. Yes.

12 Q. Okay. And so without those keys for some of the
13 Siebel, PeopleSoft, and JD Edwards software, you wouldn't
14 have access to that; correct?

15 A. Yes.

16 Q. And he says, "Sounds to me like they just said" --
17 "they" refers to Oracle; right?

18 A. In this context, yes.

19 Q. All right. "'Help yourself to the buffet.'"

20 The "buffet" refers to all of the software and
21 keys that are available on eDelivery, the Oracle website;
22 right?

23 A. Yes, it seems that Dennis Chiu was --

24 Q. All right?

25 A. -- referencing that, yes.

1 Q. Okay. And then at the top you reply to Mr. Chiu,
2 talking about this is an "interesting strategy."

3 And you go on to say, "We will keep downloading
4 new copies for our own files."

5 That's referring to copying Oracle software for
6 your own files from eDelivery; right?

7 A. Yes, the installation media.

8 Q. All right. And then you say, in big capital
9 letters, "So they can continue to get updates to their
10 software."

11 You're going to get the updates, not just the
12 installation media; right?

13 A. That's what it says.

14 Q. Right. And then you're saying, in big capital
15 letters, "Without being on Siebel/Oracle support."

16 So you're going to get all of this software
17 without having a customer who has to have a license for the
18 software; right?

19 A. Not without having a license, no.

20 Q. Well, if you're not on Siebel and Oracle support,
21 you don't have a license, do you, sir?

22 A. That's not true.

23 Q. Okay. How do you -- which license are you referring
24 to when you don't have the support?

25 A. The license and the support are two different

1 things.

2 Q. All right. Oh, so you're saying that there are
3 customers that had continuing licenses for Siebel and
4 Oracle without being on support?

5 A. Yes, there are unsupported customers who have
6 perpetual license and not carrying Oracle support.

7 MR. ISAACSON: All right. Now, let's look at
8 Plaintiffs' Exhibit 2. This is the same date, March 30th,
9 2006. This is Mr. Slarve at the bottom.

10 There's a bottom email there, Matt, on the first
11 page. I'm sorry. Up.

12 Let's go -- actually, let's go to page 2 at the
13 bottom. Let's go through the whole thing. There we go.

14 BY MR. ISAACSON:

15 Q. Now, you're eventually going to be copied on this,
16 but Mr. Chiu at the bottom is talking to Mr. Davichick, and
17 he says, "I just wanted to let you know that Siebel has
18 uploaded" -- and he talks about some patch software to
19 their FTP site for download now.

20 "I've notified Dan," referring to Mr. Slarve,
21 "of its availability, and he's begun kicking off the
22 download of the software into the RSI lab."

23 That's the same download we were just talking
24 about from PTX 1 that you were talking about on that day of
25 March 30th, 2006; right?

1 A. It appears so, yes.

2 Q. All right. And the RSI lab is a lab that you had
3 that just -- that had Siebel software in it so that you
4 could look at it and figure out how it worked?

5 A. No, we knew how it worked.

6 Q. All right. But you had a lab so you could keep
7 examining it; right?

8 A. We apparently -- this said that we were going to
9 download it, yes.

10 Q. Okay. I was asking you about the lab, sir. You had
11 a lab that was not customer specific so that your people
12 could work with the Siebel software?

13 A. Yeah, and I can only go by what it says.

14 MR. ISAACSON: All right. Let's move on up,
15 then, to -- Matt, you did get it right, on the first page,
16 that lower email.

17 BY MR. ISAACSON:

18 Q. Now, Mr. Slarve is writing directly to you on that
19 same day.

20 MR. ISAACSON: Thanks, Matt. You've got -- it
21 carries over on page 2, so Matt has put it all together
22 there.

23 BY MR. ISAACSON:

24 Q. And he's saying, "Pretty cool - so they're actually
25 posting" -- and he talks about a specific update.

1 "This has huge implications if you're saying
2 that someone like Beekley" -- that's a customer of yours;
3 right?

4 A. Yes.

5 Q. -- "and use it under their current license without
6 having to have Siebel support in place...."

7 Right?

8 A. Yes. I think it's speculating whether or not that's
9 true or not. That's why there's a question mark.

10 Q. Okay. Now, you're telling me now that you think
11 it's speculating. You didn't say at the time, "Gee, you're
12 speculating, stop that downloading"; right?

13 A. Well, I think if you look at the context of the
14 email.

15 Q. My question, sir, was did you say, "You're just
16 speculating here, stop that downloading"?

17 A. Well, again, I think if you look at what it says
18 with the question marks, it's clear that we're trying to
19 figure out why Oracle changed where it's posting things.

20 Q. Did you say "stop the downloading"?

21 A. No. I think I said if we look at the context that,
22 in fact, we're trying to figure out why these changes took
23 place from Oracle.

24 Q. Okay. So you don't say "stop the downloading"?

25 And, then -- oh, and, by the way, Beekley, this

1 is March 30, 2006. You've got two customers at this point;
2 right? You've got LCG run by your grade school
3 acquaintance Mr. Leake, and you've got Beekley; right?

4 A. I'm not sure exactly, but it sounds about right.

5 Q. And Beekley at this point hired you for a 24-hour
6 period on an hourly basis; right?

7 A. That I don't recollect.

8 Q. Okay. The -- now, Mr. Slarve writes to you in the
9 above mail that, "It's definitely an option; there's still
10 a license agreement though, which I haven't reviewed."

11 Do you see that?

12 MR. ISAACSON: And let's make sure we can show
13 that to the jury. Let me slow down here. "Which I haven't
14 reviewed," Matt. All right.

15 BY MR. ISAACSON:

16 Q. Now, that's referring to a license agreement for the
17 eDelivery website; right?

18 A. Appears to be, from this note.

19 Q. All right. So there was a license agreement -- it
20 was reported to you that there was a license agreement for
21 that site and you had downloading going on at that time;
22 right?

23 A. Yes, but it said for the customer.

24 Q. All right. You didn't say "stop the downloading,
25 let's read this license agreement," did you?

1 A. I don't see that in this email.

2 Q. Okay. And then Mr. Slarve goes on, "By going with
3 the 'open keys' approach with full access to software from
4 Oracle, the toothpaste is out of the tube."

5 That's referring to all of the Oracle software
6 now becoming available to you; right?

7 A. Yes. This is referring to Oracle putting all of its
8 software available to the public.

9 Q. Right. Putting it on a website with a license
10 agreement that you hadn't reviewed; right?

11 A. I don't know that for a fact because I didn't look
12 at it myself.

13 Q. All right. Let's talk about that.

14 All right. So your people are saying -- you're
15 the CEO of the company, you're a small company, got a few
16 vice-presidents working, you've only got two customers.

17 Your people are saying, "We're going -- the
18 toothpaste is out of the tube."

19 It says at the end of this paragraph, "The door
20 has just tripled in size and it's wide open for support."

21 You're looking at growing your business. You
22 know there's a license agreement for this website, and you
23 tell me you don't know for a fact that there was a license
24 because you didn't look at it yourself; right?

25 A. I'm only reading what you have in the email here.

1 Q. Well, I'm talking about your testimony, sir.

2 You just told me, "I don't know that for a fact
3 because I didn't look at it myself."

4 All this -- you're downloading software from a
5 website, it's -- your company is starting, there's a
6 license agreement, and you didn't look at it yourself?

7 A. My understanding is the customers were fully
8 licensed for the software.

9 Q. That wasn't my question, sir. All right?

10 There was a license for the website, you're
11 downloading, and you didn't know for a fact anything about
12 that license, you left that to other people?

13 A. Yes.

14 Q. And it says -- one more line there in the email,
15 "outside of making the software 'gnu freeware'," that
16 means -- GNU freeware refers to open source software that
17 would be available to anyone without a license; right?

18 A. Under the GNU, which is a global license --

19 Q. Right.

20 A. For freeware, yes.

21 Q. All right.

22 "I don't think we could ask for a better
23 scenario for enabling us to grow our customer base."

24 That's what Mr. Slarve said to you on
25 March 30th; right?

1 A. That's what it says in the email, yes.

2 Q. Okay. Now, I'm going to ask you to look at
3 Exhibit 222, which is farther ahead in the same binder.

4 A. I'm there.

5 Q. All right. This is an email at the bottom between
6 Mr. Slarve, Mr. Chiu, and Bola Ola. Bola Ola was your one
7 engineer at this point who was providing support, who would
8 be the lead engineer for support to your customers; right?

9 A. I believe that's accurate.

10 Q. All right. And you'll see at the bottom of the
11 first page, "I noticed on the Oracle eDelivery site" --
12 222? Yes.

13 "I noticed on the Oracle eDelivery site," that's
14 the same site that we were discussing; right?

15 A. Yes.

16 Q. All right. "That every time they make" -- and this
17 is -- I'm sorry, May 31st, a couple months later, "that
18 every time they make a new patch available," okay, so you
19 are now pulling off patches from that website; right?

20 A. Yes, it says patches.

21 Q. All right. And we agreed yesterday that patches
22 were not installation media; right?

23 A. Generally not.

24 Q. All right. "So it will be good" -- and from the
25 second paragraph, "So it will be good to ensure that we

1 download all the available media that is currently
2 available, to avoid having the client request it should
3 they be on" an older release. "Would you be able to enable
4 a convenient location so that Bola could help us download
5 all the patches for now."

6 You were downloading all of the patches that
7 were available on this website by the end -- starting by
8 the end of May 2006; right?

9 A. Yes. I don't know whether it actually happened or
10 not, though.

11 Q. Why don't you know whether it happened?

12 A. I don't recollect and don't know whether it
13 happened.

14 Q. All right. Your business started, and you're
15 downloading patches, all the available patches from Oracle,
16 off of a website, and you've got a small company, a few
17 people working, and you don't know whether that happened?

18 A. Well, again, my focus was around whether the
19 customers had a license and the rights to certain software
20 that they got, and we made sure that they didn't get it.

21 Q. Are you telling me that all you did was sit around
22 all day and say "my only concern is" -- I lost my realtime.

23 You say your focus was around whether the
24 customer has licenses. Is that all you thought about all
25 day? You didn't look at what people were downloading? You

1 didn't try to understand what software was coming in, what
2 patches you had?

3 A. Well, again, my belief was, as long as the customers
4 were fully licensed and had the rights to the software, we
5 made sure they didn't get anything they weren't entitled
6 to.

7 Q. I didn't ask you that, sir. I asked you what you
8 were actually doing, okay?

9 I was asking you, did you know what software you
10 were downloading, what patches you were downloading, what
11 your people were doing?

12 A. Not on an hour-by-hour, day-by-day basis. I was
13 focused on selling and building a business.

14 Q. I didn't ask you hour-by-hour, day-by-day.

15 You've got all this Oracle software, all these
16 patches, and you don't know whether you have them or not?

17 A. I didn't know at that level of detail, no.

18 Q. Okay. Let's look at -- oh, in the next paragraph --
19 well, I'll skip that. Let's look at number 6.

20 COURTROOM ADMINISTRATOR: What number, Counsel?

21 MR. ISAACSON: PTX 6. And this is again
22 preadmitted, so we're putting this on the screen.

23 BY MR. ISAACSON:

24 Q. The front email is from Mr. Slarve to Susan -- is it
25 Tahtaras?

1 A. Yes, Tahtaras, yes.

2 Q. Thank you.

3 And it says, "Hey, folks, attached is a
4 spreadsheet that has all the Siebel application media that
5 is available on the Oracle eDelivery website."

6 That's that same website we've been discussing;
7 right?

8 A. Yes.

9 Q. "We currently don't have the capacity to store it
10 all, but will soon." It's going to be up to -- "just the
11 ENU versions make up three terabytes. Once we have the
12 infrastructure in place," and we put "it all down so that
13 we have a full library."

14 And then there's an attachment listing media,
15 page after page after page.

16 Did you know this was going on?

17 A. I don't recollect exactly, but, again, it wasn't an
18 area that I was concerned about.

19 Q. Okay. Did you know that all of this Siebel
20 application media was being taken from the Oracle eDelivery
21 website, over 3 terabytes of information, that you didn't
22 have the infrastructure in place, but you were getting
23 enough hardware or whatever you needed to store all this,
24 did you know anything about that?

25 A. I don't know that it actually took place.

1 Q. Did you know -- do you know now?

2 A. No, I don't.

3 Q. Who does?

4 A. It would be an engineering team.

5 Q. Did you talk to any of them about this?

6 A. No, because, again, we were focused on whether
7 clients got the software that they were licensed for. So
8 that was my focus.

9 Q. But you didn't look at what software you were
10 taking. You didn't know anything about what software your
11 company was downloading; is that right?

12 A. I wasn't involved in the day-to-day file downloads,
13 no.

14 Q. All right. So when you had this belief that you're
15 talking about, that you were entitled to the software, you
16 didn't actually know what software you had?

17 A. Well, again, I was focused on building the business
18 and had engineering people to focus on that.

19 Q. Exactly. You were focused on building the business.
20 You had a new business, it's 2006, you weren't looking at
21 what you were downloading, what you were taking from
22 Oracle, you just had this belief that you must have been
23 entitled to do it even though you didn't know what you had.
24 That was the situation; right?

25 A. Again, I was focused on building the business.

1 MR. ISAACSON: All right. Let's look at
2 Plaintiffs' Exhibit 223. All right. Let's go to -- this
3 is preadmitted, so let's go to page 2 of this.

4 BY MR. ISAACSON:

5 Q. This is Mr. Whittenbarger. Is he one of your
6 engineers, or is he a vice-president?

7 A. Whittenbarger I don't believe was a vice-president.

8 Q. Okay. But he's writing to one of your
9 vice-presidents, Mr. Chiu?

10 A. That's correct.

11 Q. And he says, "Offline Explorer is now set up to
12 download content of the Oracle eDelivery website on a
13 weekly basis."

14 By this point in the fall of 2006, this is
15 October 5th, you were downloading from this website on a
16 weekly basis; right?

17 A. Yes.

18 Q. All right. And you were -- and it goes on to say,
19 "In addition to the Siebel keys," you're also downloading
20 PeopleSoft and JD Edwards keys; right?

21 A. That's what it says, yes.

22 Q. All right. You didn't have a single JD Edwards
23 customer at this point, did you?

24 A. That I don't recollect by date.

25 Q. This is fall of 2006. You didn't get your first JD

1 Edwards customer until years later, did you?

2 A. I didn't believe it was until early 2007.

3 Q. Okay. The -- at this point you've got no JD Edwards
4 customers and you're downloading the JD Edwards keys
5 necessary to unlock some versions of the JD Edwards
6 software; right?

7 A. That's what it says in the email.

8 Q. Right. And you were not entitled at this point to
9 get those keys from your customers, were you? Isn't that
10 correct?

11 A. Again, I don't know the exact combination of
12 software, and I don't know what was actually downloaded.

13 Q. Okay. And you weren't checking on that at the time,
14 you were focused on building your business?

15 A. Yeah, I was working on what the archive
16 methodologies were which was related to that special point
17 I talked about yesterday on Siebel.

18 Q. Okay. And at this point, on page 1, Dennis Chiu is
19 responding, "This is great, John. Thanks so much for doing
20 this." "It'll be a big help to help us capture any deltas
21 on that website," because now you're going to do it weekly.

22 And then he says, "Thanks much for adding this
23 to the library, John."

24 By this point your folks are calling this the
25 library; right?

1 A. Yes. Again, it should be installation media.

2 Q. But at this point your library is full of patches as
3 well; right?

4 A. Well, again, as you look at the different product
5 lines, Siebel used different terminology than PeopleSoft,
6 JD Edwards, they all used different methodologies.

7 Q. That wasn't my question, sir. My question was the
8 library was full of patches at this point also; right?

9 A. That's what it's saying, that there are patches a
10 part of it.

11 Q. All right. So after you got Siebel software in the
12 library, you then were also putting PeopleSoft software in
13 the library; right?

14 A. That's what it seemed to say.

15 Q. Okay. Now, you have called PeopleSoft the
16 Rolls-Royce of HR systems in finance; right?

17 A. I think it still is, yes.

18 Q. Okay. And your PeopleSoft -- the PeopleSoft -- the
19 software in the library for PeopleSoft was not for any
20 specific customer. You didn't have a PeopleSoft customer
21 at this point, did you?

22 A. I'm sorry, I don't know which -- what are you
23 referring to.

24 Q. Well, let's say by the end of July 2006, you were
25 loading software into the library for PeopleSoft, and you

1 didn't have a PeopleSoft customer; correct?

2 A. Again, I don't know when the first exact date was
3 for the first PeopleSoft customer.

4 Q. Well, let's look at -- and now you'll have to look
5 in the second binder in front of you. All right. 1543?

6 A. 1543.

7 MR. ISAACSON: Yes.

8 Oh, I'm sorry. Don't put it on the screen
9 though.

10 Oh, let's start with -- I'm sorry. I'll do that
11 second. Let's do a preadmitted one, Exhibit 4. Sorry to
12 do that to you. That would be found in the first binder.

13 THE WITNESS: Okay.

14 BY MR. ISAACSON:

15 Q. All right. And we looked at this yesterday. And
16 just go to the last page. We talked about this exhibit
17 yesterday.

18 This is where Susan Tahtaras has just started to
19 work, and she's going to start downloading PeopleSoft
20 software from eDelivery.

21 And at the bottom of that -- of the second to
22 last paragraph on page 4, "The intent is to familiarize her
23 with our lab process" -- and that's that lab we were
24 discussing; right?

25 A. Uh-huh.

1 Q. You have to say --

2 A. Yes. I'm sorry.

3 Q. All right. "-- as well as having environments on
4 hand when we confirm a PeopleSoft client."

5 You were doing the downloading of PeopleSoft
6 software into the library before you had a client; right?

7 A. Yes, that's what the email says.

8 Q. All right. And, in fact, your first PeopleSoft
9 customer was the City of Flint later in 2006; right?

10 A. Sounds familiar, yes.

11 Q. Okay. Now, PeopleSoft software, in addition to
12 being the Rolls-Royce, as you said, is also technically
13 very complicated. It's difficult and complex because the
14 tax and regulatory rules change constantly and in short
15 timeframes; is that correct?

16 A. That's true for every payroll system.

17 Q. All right. Now, you've got the -- let's look at how
18 you got the PeopleSoft software.

19 Now, in addition to eDelivery, you also started
20 to use an Oracle website called Customer Connection; right?

21 A. Yes.

22 Q. All right. Let's look at Exhibit 8.

23 A. Yes, I'm there.

24 MR. ISAACSON: All right. This is preadmitted,
25 so we'll put it on the screen.

1 BY MR. ISAACSON:

2 Q. Let's start at the very top so we can see what this
3 is.

4 This is an instant message that produced in
5 discovery. And you would agree with me this is -- the two
6 people talking on this instant message format are Susan
7 Tahtaras and Mr. Chiu, your vice-president?

8 A. Yes.

9 Q. All right. And then towards the middle of the --
10 Mr. Chiu says at -- it has the timestamp 20:21:17,
11 two-thirds of the way down, "That's all right. Dan also
12 will be helping us with the major download from Customer
13 Connection in the days ahead. So we will eventually have
14 all of this inhouse and at our disposal. Glad this key
15 piece is available to us now as well. Another big win for
16 us."

17 That's referring to a major download of People
18 software -- PeopleSoft software from Customer Connection,
19 an Oracle website; correct?

20 A. Based on the context, that seems to be accurate.

21 Q. Right. He says -- and Ms. Tahtaras says, "Yes, I'm
22 surprised Raj was able to get that."

23 Who is Raj?

24 A. I believe he was another engineer we had hired.

25 Q. All right. "And all the people I know guard that

1 info with their life," exclamation point.

2 She goes on to say, "I can get them to get info
3 from Customer Connection for me, but they never give up the
4 ID/password."

5 Mr. Chiu says, "Well, I run into the same
6 problem with people who are still with Siebel/Oracle. They
7 would rather give me their firstborn than ID. But Raj's
8 connections from outside of PeopleSoft, outside
9 consultants, seem to have less issue with things like
10 that."

11 One of your engineers got the ID password for
12 this website and -- got it from an outside consultant, and
13 you began a major download from Customer Connection; right?

14 A. I see what it says. I don't know whether it ever
15 happened. It's clearly wrong.

16 Q. What do you mean it's clearly wrong?

17 A. It's clearly wrong. They should never ever have
18 tried to get a password from someone outside. That's --
19 that's not right.

20 Q. All right. But that's what they did, and you did a
21 major download at your company, didn't you?

22 A. I don't know that that download ever actually took
23 place. I only see that they talked about it.

24 Q. All right. We're seeing a lot of -- it's kind of
25 early in the day, but we've seen several documents about

1 major downloads going on, but you just never know whether
2 that is happening. Is that your testimony, sir?

3 A. On these particular items, I do not know personally.

4 Q. Right. Because you were just focused on growing the
5 business?

6 A. That's correct.

7 Q. All right. Let's look at Exhibit 9.

8 This is September 22nd, 2006. At the top,
9 Mr. Whittenbarger and Mr. Chiu again. Susan Tahtaras and
10 Mr. Slarve are cc'd on it.

11 And they say -- Mr. Whittenbarger says, "Here's
12 a spreadsheet with the progress to date on the subject
13 extract. About 20 gigabytes of content has been extracted
14 so far."

15 And it goes down to say -- he goes down to say,
16 "Raj, Susan," in the middle, "See the email thread below
17 for further background information on this effort. We are
18 using" -- I believe that's a virtual machine, "to
19 centralize the support website extraction creation and
20 maintenance processes for Siebel and PeopleSoft."

21 This was part of the downloading that was
22 actually going on; right?

23 A. Yes, it appears so.

24 MR. ISAACSON: Okay. And if we could go to page
25 5, there's an attachment referring to information on

1 Customer Connection.

2 Let's make the -- get that top part as easy to
3 read as we can, Matt, the implementation guide.

4 BY MR. ISAACSON:

5 Q. All right. And there's a couple pages in this
6 exhibit, page 9, of things being listed, and these include
7 manuals; right? Oracle manuals?

8 A. Sorry. I can't see the -- can you blow that up a
9 little bit?

10 MR. ISAACSON: PTX 9. Make it as big as you
11 can, page 5, Matt.

12 THE WITNESS: Yes, it looks like these are the
13 documentation that goes with the software.

14 BY MR. ISAACSON:

15 Q. Right, including for JDE; right?

16 A. That's one of the line items, yes.

17 Q. Okay. Let's look at Plaintiffs' Exhibit 10.

18 All right. Let's start at page 3, the end of
19 this email chain.

20 Mr. Baron, at the bottom, where it says "George
21 and Dennis" -- all right. He says -- Mr. Baron, he's one
22 of your engineers; right?

23 A. Yes, he is.

24 Q. And he ultimately becomes in charge of your
25 automated downloading; right?

1 A. He was an engineer who worked on one of the
2 automation tools, yes.

3 Q. Some people describe that as his passion?

4 A. That I wouldn't know.

5 Q. Okay. He says, "George and Dennis, I completed a
6 larger download test with my script."

7 So he's talking about a download.

8 So let's go to page 2 where Mr. Chiu responds,
9 "Hi, Doug," talking to Mr. Baron. Thank you "for your
10 continued focus on improving the download tool. I am
11 looking to have a complete library of the content that is
12 available from Customer Connection. With the considerable
13 progress you've already made significant strides on
14 procuring the Continuing Documentation" on Supported
15 Platforms -- I'm sorry, "Continuing Documentation,
16 Supported Platforms, Solutions, and now the updates and
17 fixes for Financial Expenses 8.4, I think we should
18 proactively download all the available content available."

19 Now, at this point you have downloaded
20 documentation into the library; right?

21 A. Yes, the installation media library looks like
22 they're adding a bunch of things to it, yes.

23 Q. Documentation is not installation media, is it?

24 A. No, actually it is.

25 Q. Okay. So your testimony is that documentation is

1 installation media?

2 A. Sure. It comes with the product.

3 Q. Supported platforms, is that installation media?

4 A. I'm not exactly sure what that document is or -- at
5 this point.

6 Q. Solutions, is that installation media?

7 A. That seems to be related more to support.

8 Q. Yes. Updates and fixes, that's not installation
9 media, is it?

10 A. That's correct.

11 Q. Okay. You said yesterday the library was only
12 installation media. Your lawyer, undoubtedly after talking
13 to you, said the same thing in opening statement.

14 It is not correct, is it, that the library only
15 had installation media, it had patches, it had fixes, it
16 had updates?

17 A. I do not know that those items were actually
18 downloaded so I can't answer that question.

19 Q. Wait a second. You testified yesterday, and your
20 lawyer said in open court, that that library only had
21 installation media. But you don't know whether that's true
22 or not? Is that your testimony?

23 A. I'm saying that I don't know that these items were
24 ever actually downloaded.

25 Q. That's not exactly my question, okay?

1 You have made the representation that the
2 library only included installation media. Your lawyer has
3 repeated that. You don't know whether that representation
4 is true or not; correct?

5 A. To my understanding, it's true.

6 Q. But you're -- you're giving an understanding, sir,
7 without actually knowing what was downloaded; correct?

8 A. Yes, I do not know whether these items were
9 downloaded.

10 Q. Okay. And the document says they were downloaded,
11 doesn't it?

12 A. I don't think it says that they were. It says that
13 they -- it says that they're requesting that they be
14 downloaded.

15 Q. Let's look at it again, sir.

16 "With the considerable progress you've already
17 made significant strides on procuring the" documentations,
18 the platforms, solutions, and now the updates and fixes?

19 A. Yes, that's correct.

20 Q. Okay. It had started. You had those downloads;
21 right?

22 A. That's what it says, yes.

23 Q. You're not -- when you say this library was confined
24 to installation media, you're just wrong, aren't you?

25 A. I don't know that I am, no.

1 Q. All right. So you made the statement under oath
2 that the library only included installation media, and you
3 didn't know whether it was true; correct?

4 A. To the best of my knowledge, it's true.

5 Q. When you say to the best of your knowledge, you're
6 saying it without actually having any knowledge. Isn't
7 that your testimony?

8 A. I don't have the detailed knowledge because I did
9 not look myself, no.

10 Q. You're making statements under oath in court that
11 certain things happened and certain things true -- are true
12 without having any actual knowledge about it. Isn't that
13 what you're telling us?

14 A. It's my understanding that that is the truth, that
15 it only contained the installation media.

16 Q. But you're telling us you're having understanding
17 without actually knowing the facts. Isn't that what you're
18 telling us?

19 A. I'm saying that if the facts are different, then I'm
20 not aware of them.

21 Q. Mr. Chiu goes on to say in the next paragraph, "I
22 believe it's in our best interest to capture all the
23 updates and fixes available to us. Because we wouldn't
24 want to risk waiting to take delivery if there may be any
25 changes to Customer Connection."

1 He goes on to say, "I'd like to plan on pulling
2 down as much of the content as possible, but if it might
3 make more sense to house all that content on a large
4 centralized server, we can work on that over the course of
5 next week."

6 When you were bringing in new hardware, spending
7 money on servers to store all this information, is it your
8 testimony you didn't know that was going on?

9 A. I'm not sure that that server was ever bought, and
10 I'm not sure that that ever took place.

11 Q. The -- on the first page, Mr. Baron is now
12 responding to Mr. Chiu's email, and at the bottom he says,
13 "I tried to prioritize the tasks as follows. Please let me
14 know if I need to change the order. Finish downloading all
15 release 8 fixes." And he goes on to explain the order of
16 downloading.

17 It's your testimony you don't know what happened
18 next; is that right?

19 A. Yeah, I'm not sure. I can't recollect exactly.

20 MR. ISAACSON: Okay. Can we throw up the slide
21 of 3510, Matt? Do you have that handy?

22 There's a slide of PTX 3510. There we go. This
23 has been shown to the jury before.

24 BY MR. ISAACSON:

25 Q. This is your library. Is it -- this is the

1 directories that you disclosed in discovery of what your
2 libraries -- of the address listings for your archive --
3 for your library; right?

4 A. Yes, I remember that from the presentation.

5 Q. Okay. And it's a fact, in that item number 1,
6 client-software/PeopleSoft, you don't know what patches
7 were in there, what updates were in there, what fixes were
8 in there. You don't know what downloading went into that;
9 correct?

10 A. No, that's correct, yes.

11 Q. All right. 447, this is now June 2009?

12 A. I'm sorry. Which document are we looking at?

13 Q. PTX 447. We move forward from 2006 and 2007 to
14 2009?

15 A. Okay.

16 Q. And on page 1 at the bottom, Krista Williams is
17 talking. She's your senior PeopleSoft manager; correct?

18 A. Environments manager, yes.

19 Q. Right. She's in charge of the PeopleSoft
20 environments that we've been talking about in this case?

21 A. Yes.

22 Q. And she says the software is now in, she identifies
23 the drive. "Under there is PeopleSoft with all of the
24 install media for PeopleSoft," and, "There is another
25 directory for development use which holds the Oracle,

1 Microsoft, and IBM software which we need. Is that what
2 you need in one of those locations?"

3 That Oracle software for development use, that's
4 referring to Oracle Database software; right?

5 A. I think that's accurate.

6 Q. All right. So for general development purposes, you
7 were putting Oracle Database software in the library;
8 correct?

9 A. It looked like there was a directory of Oracle
10 Database software.

11 Q. Okay. Let's back -- let's turn one tab to 448.
12 We're going back in time to January 2008?

13 A. Okay, I'm there.

14 Q. At the bottom Mr. Baron and Mr. Slarve are talking
15 by email on January 28, 2008.

16 He says, "Guys, we're running real low on space
17 on rsi-data datastore drive. This is where we keep the
18 PeopleSoft software library." Right?

19 A. Yes, I see it.

20 Q. This library, in 2008, was continuing to grow, and
21 you were running out of space?

22 A. Yes, apparently so.

23 Q. All right. But you were not aware of that; is that
24 your testimony?

25 A. I don't recollect whether I was aware or not. I was

1 involved in, obviously, certain things, but I don't
2 remember this one particularly.

3 Q. All right. And then let's talk about that eDelivery
4 website. We'll go back to that. That license you never
5 looked at.

6 Could you look at -- don't put on the screen --
7 PTX 649.

8 Sir, this is a --

9 A. Wait a second. I'm still trying to find it here.

10 Q. If you want to look at them together --

11 A. I've got it here.

12 Q. -- 649 is a page where you enter the Oracle
13 eDelivery website, and 650, which is the next tab over, is
14 the electronic delivery trial license agreement.

15 All right? Do you see that?

16 A. Yes.

17 Q. All right. Now, it -- the -- when you enter the
18 Oracle eDelivery website, it said, "By accessing the
19 software on this website, you agree that (1) you have
20 already obtained a license from Oracle, or an Oracle
21 partner, for your use of the software," and it goes on to
22 talk about that license.

23 "Or (2) if you have not already obtained a
24 license from Oracle or an Oracle partner for your use of
25 the software, the Oracle Electronic Delivery Trial License

1 Agreement on this website governs your use of the
2 software."

3 You did not have a license with Oracle; correct?

4 A. That's correct.

5 Q. Okay. And you see that there was a trial license,
6 that's at 650, that says this gives you a temporary right
7 to use the programs for evaluation purposes on a single
8 computer designated by you, and it tells you the term of
9 the license is 30 days. All right?

10 Have you ever reviewed this license before?

11 A. This particular one, I don't remember, no.

12 Q. And it's fair to say that all of that software that
13 you've downloaded from eDelivery you kept for more than 30
14 days and you didn't just look at it on a single computer?

15 A. Again, I don't know how it was used, and I don't
16 know if it was kept longer than we had actual customers who
17 had the same licenses.

18 Q. That wasn't my question, sir. You kept it a lot
19 longer than 30 days; right?

20 A. Again, I don't know what was downloaded under it,
21 but my assumption would be you're probably correct, right.

22 Q. And I would be correct to say your people weren't
23 looking at it on just one, stand-alone computer; correct?

24 A. Well, my guess is it was probably on one server
25 based on what I saw.

1 Q. Now, you used -- your people used all of the
2 software, PeopleSoft software, Oracle Database software,
3 Siebel software, JDE software, you used that in connection
4 with your work for customers; correct?

5 A. Yes.

6 Q. And the library, in addition to PeopleSoft and
7 Siebel, also included JDE install media; correct?

8 A. I'm sorry. Can you say that again?

9 Q. Sure. We talked about the library having Siebel and
10 PeopleSoft. It also included JD Edwards installation
11 media; correct?

12 A. That's my understanding, yes.

13 MR. ISAACSON: All right. And let's go back
14 to -- oh, let's look at 35 -- PTX 3511 at 4. This is a
15 response to an interrogatory, interrogatory number 25. Do
16 you have any objection to me showing it on the screen?

17 COURTROOM ADMINISTRATOR: It's not admitted.

18 MR. ISAACSON: It's not admitted.

19 COURTROOM ADMINISTRATOR: No.

20 MR. ISAACSON: Correct, it's not admitted. I'm
21 asking if he has -- if I have his permission.

22 THE COURT: Oh.

23 MR. ISAACSON: Oh, please take -- I'm sorry, I
24 didn't see it was on the screen yet.

25 THE WITNESS: I'm sorry. Which number is that?

1 MR. ISAACSON: 3511.

2 I'm sorry. We made it a separate handout. If I
3 could approach, Your Honor?

4 THE COURT: Just give it to my court clerk,
5 Mr. Isaacson.

6 MR. WEBB: Your Honor, before we do that, can we
7 approach on this?

8 THE COURT: Yes.

9 (Sidebar conference held as follows:)

10 MR. ISAACSON: That would be the end of
11 interrogatory 24.

12 MR. WEBB: So this is a partial.

13 MR. ISAACSON: All of interrogatory 25 and the
14 answer to interrogatory 25.

15 MR. WEBB: No objection. Sorry.

16 THE COURT: All right.

17 (Sidebar conference concluded.)

18 BY MR. ISAACSON:

19 Q. I'd like you to look at page 4 of this.

20 MR. ISAACSON: Do you have any objection to
21 showing page 4 on the screen?

22 MR. WEBB: No.

23 MR. ISAACSON: I'd like to move to admit it.

24 THE COURT: It's admitted.
25

1 (Plaintiffs' Exhibit 3511 received into
2 evidence.)

3 BY MR. ISAACSON:

4 Q. Could we look at page 4?

5 A. Sorry. I don't seem to have page 4 in the handout.
6 Sorry. Okay.

7 Q. All right. You'll see on page 4 there's that same
8 listing of library directories we looked at before that was
9 part of 3510, and so --

10 A. Yes.

11 Q. So what happened here was you -- you and your
12 company answered in the interrogatory a question we asked
13 in the discovery, you gave us this information, it was
14 later put into a stipulation, and about that first
15 direct -- about that first library -- and this is a library
16 that no longer exists; right?

17 A. But my understanding is these are part of the
18 documents that were deleted prior to the litigation.

19 Q. Right. In January of 2010, right, that first
20 directory?

21 A. That's my understanding.

22 Q. And the -- you say about that directory, that first
23 directory, that it included materials relating to
24 PeopleSoft software, and you say about the second one that
25 it included materials related to PeopleSoft software and

1 Oracle Database software; correct?

2 A. I see that in the document, yes.

3 Q. All right. You never disclosed that these libraries
4 also had material for JD Edwards and Siebel; correct?

5 A. I don't see it listed in these particular name
6 directories.

7 Q. In fact, you said under oath yesterday that the
8 library did not include Siebel software; right?

9 A. I don't remember saying that.

10 Q. Well, "Did you have a library of Siebel software and
11 documentation at Rimini Street?

12 "No."

13 Do you remember saying that yesterday?

14 A. Again, you're talking about -- you were asking me
15 about what the allegation was versus what I said the
16 installation media --

17 Q. I just read you the complete question. "Did you
18 have a library of Siebel software and documentation at
19 Rimini Street?

20 "ANSWER: No."

21 Do you remember giving that testimony?

22 A. No, I don't remember it in that context, no.

23 Q. Okay. You did have a library of Siebel software and
24 documentation; correct?

25 A. Based on the documents we reviewed and

1 understanding, it would be yes, of the installation media.

2 Q. All right. Let's look at Exhibit 204, which will be
3 back in your first binder.

4 COURTROOM ADMINISTRATOR: That's not admitted
5 either.

6 MR. ISAACSON: Yes, it is not admitted. I would
7 move to admit it. I'm not sure why there's an objection.

8 MR. WEBB: No objections, Your Honor.

9 THE COURT: All right. It is admitted.

10 (Plaintiffs' Exhibit 204 received into
11 evidence.)

12 BY MR. ISAACSON:

13 Q. All right. If we can look at Exhibit 204 on the
14 screen, the first page.

15 This is December 19th, 2005. Your company has
16 just started, you don't have a customer yet, and you're
17 trying to get up and running; right?

18 A. Yes.

19 Q. And Mr. Chiu is the number two person in the company
20 at this point, other -- well, I don't know how you count
21 your cofounder. He's the number two or number three person
22 in the company at this point; correct?

23 A. That's correct.

24 Q. Okay. And he's talking to Victor Shu. And he was
25 some sort of consultant that was working with your company;

1 correct?

2 A. I believe so.

3 Q. And Mr. -- in the middle you can see that Mr. Shu is
4 working on a demo. And what you're working on here is a
5 demo for Siebel; right? You can see up above the
6 references to Siebel software?

7 A. Yes, that appears to be correct.

8 Q. All right. And he's saying to the consultant, "If
9 you might be able to help me with access, I can drive the
10 rest of the demo." Right?

11 A. Yes.

12 Q. So you don't have access to the Siebel software?

13 A. Apparently not, not at this point.

14 Q. Okay. And Mr. Shu says to you, "I don't know what
15 to say" -- I'm sorry, to -- Mr. Shu says to Mr. Chiu, "I
16 don't know what to say in terms of access. I think we are
17 in the same situation, i.e., I will need access to a demo.

18 "I would think you would have taken out a
19 contract with Siebel by now. It's my mistake if I had that
20 incorrect assumption. I don't know you can continue
21 operation without a contract, but that's just my personal
22 observation - sort of thinking aloud."

23 At the very beginning of the company, you had a
24 consultant telling your number two or number three
25 executive that you don't actually have a license agreement

1 with Siebel, how are you going to continue operation.

2 That's what was happening; right?

3 A. That seemed to be their discussion.

4 Q. Okay. And, in fact, throughout the history of the
5 company, Rimini Street has never had a license agreement
6 with Oracle?

7 A. Are you talking about all products? We do have
8 license agreements with Oracle on some products.

9 Q. All right. You've never -- for the products at
10 issue in this case, you never had a license; correct?

11 A. That's correct.

12 Q. All right. And for the products at issue in this
13 case, you've never paid a penny to Oracle for the use of
14 the Oracle software; right?

15 A. That's correct.

16 MR. ISAACSON: All right. Now, let's look at
17 554. This has not been admitted. I would ask counsel if
18 there's any objection to admitting it.

19 MR. WEBB: What number is it?

20 MR. ISAACSON: 554. This is an email between
21 Mr. Ravin and Mr. Slepko and a few other people.

22 THE WITNESS: Yes, I'm on 554.

23 MR. ISAACSON: I'm waiting for a response from
24 your counsel.

25 MR. WEBB: No objection.

1 THE COURT: It is admitted.

2 (Plaintiffs' Exhibit 554 received into
3 evidence.)

4 BY MR. ISAACSON:

5 Q. Let's look at page 3. You are writing to Walter --
6 is it Hakenewert?

7 A. Hakenewert.

8 Q. Hakenewert. And what's his position with the
9 company?

10 A. Sales rep.

11 Q. Sales rep.

12 So you're writing to a sales rep in October
13 2008, and you're having a problem with a customer.

14 You say, "I read this as they are NOT," all
15 capitals, "comfortable going third party at this time -
16 they want the savings...but were clearly not 'fully on
17 board' with the model. The fact that they note concerns
18 over license rights and future product interests - these
19 are all clearly the foundation of the deal that was not
20 solid."

21 And so when you're referring to license rights,
22 you're referring to your -- your license rights, your
23 rights to use the Oracle software to support the customer;
24 correct?

25 A. License rights of the customer to use an independent

1 maintenance option, yes.

2 Q. Correct. And the independent maintenance option is
3 just a long way of saying support for the customer; right?

4 A. Yes, some support option other than Oracle.

5 Q. All right. Now, let's go to page 1.

6 A. Okay.

7 Q. You write to your sales rep -- so you're losing this
8 customer -- at the bottom, "We have all lost here."

9 And then you say in the middle of the paragraph,
10 of the next paragraph, you say, "Somebody planted this fear
11 in them," about the license rights, "and it wouldn't matter
12 if we had the best JDE resources in the world if we don't
13 resolve the foundation issues."

14 And the foundation issues are whether the
15 customer license agreements give you permission to do your
16 work; correct?

17 A. That's what the reference is here, yes.

18 Q. All right. And you say, "A client first and
19 foremost must believe they have the right to be with us and
20 use their software...or the rest is just noise."

21 If the clients don't believe and didn't believe
22 that you had the rights to copy Oracle software and use it
23 for support, you weren't going to have any customers;
24 right?

25 A. This actually says that if we -- essentially similar

1 but not exactly that.

2 Q. Right. Everything else other than those license
3 rights is just noise. You're not going to have customers
4 unless your customers believe you have those rights;
5 correct?

6 A. They have to believe they have the right to get a
7 third party to do their maintenance for them, yes.

8 Q. And it was important for you to -- for them to
9 believe they had those rights; correct?

10 A. Yes.

11 Q. Because even if you had the best resources in the
12 world, without those rights you were not going to have any
13 customers?

14 A. Yes. The client has to have the option to have a
15 choice, yes.

16 Q. Now, in terms of those license rights, those ones
17 that you say you believe you had, with respect to the
18 customer licenses, I want to ask you about Siebel.

19 What rights in the customer Siebel licenses did
20 you believe you had during these years, 2006, 2007, 2008?

21 A. Well, when Siebel wrote us and said that they didn't
22 believe that we had the right to offer it, our lawyers
23 responded appropriately to every point.

24 Q. That wasn't my question, sir.

25 You have told this Court that you believed you

1 had the right -- you've said this several times -- to do
2 what you had to do.

3 And now I'm asking you just about Siebel. I'm
4 not asking you about PeopleSoft. All right?

5 What license provision of a Siebel license did
6 you ever point to or review that you thought gave you those
7 rights?

8 A. Well, actually, every customer license has key
9 points, one of them being the license right for the
10 software, to give a third party the right to stand in their
11 shoes, yes.

12 Q. Why do you say you know what every license agreement
13 says? Did you see every license agreement? And now I'm
14 just talking about Siebel. Did you see every Siebel
15 license agreement?

16 A. Well, Siebel provided us a copy of a license to
17 review, yes.

18 Q. So you looked at one license agreement given to you
19 by Siebel, and that's what you relied on?

20 A. Well, Siebel gave it to us so we could rely on it,
21 yes.

22 Q. All right. And so if we wanted to know what you
23 relied on, we would look at that license agreement that was
24 given to you?

25 A. Yes.

1 Q. Okay. The -- I want to talk about something else
2 that happened early in your company history. You heard me
3 talk about this in opening statement, the Siebel
4 SupportWeb, another Oracle website.

5 And now, but before we talk about that, I think
6 you have said that you had a golden rule, every customer's
7 downloads are kept separate; right?

8 A. Yes, by the time we talked about that in my
9 deposition, yes.

10 Q. Okay. And that was a golden rule within your
11 company, keep every customer's download separate?

12 A. Yes, relating, again, to the downloads, not the
13 installation media.

14 Q. And the term silos has been used. You keep
15 everything in separate silos for different customers;
16 correct?

17 A. For the downloads at the time we did the deposition,
18 yes.

19 Q. And you said the same thing to the Court, you have
20 said that each client is assigned a separate silo, and all
21 the information you maintain is in those separate silos;
22 correct?

23 A. Yes, again, for the individual downloads by the time
24 we did the depositions, yes.

25 Q. Right. And you talked about -- let me ask you about

1 318.

2 A. Yes, I'm there.

3 Q. All right. This has been --

4 MR. WEBB: Objection, Your Honor. Could we
5 approach?

6 THE COURT: 318 is not in evidence at this
7 point?

8 MR. ISAACSON: It's not admitted at this point.

9 THE COURT: All right. You may approach.

10 (Sidebar conference held as follows:)

11 THE COURT: All right. Go ahead.

12 MR. WEBB: I thought we had an understanding
13 we're not going to get into the TomorrowNow issues until
14 the break. But this is relating to the lawsuit with
15 TomorrowNow, something we need to address after --

16 MR. ISAACSON: I'll deal with it without putting
17 it on the screen. I wasn't actually coming to that part of
18 it right now, so I'll just read him parts of it and deal
19 with the TomorrowNow stuff later. I will not move to admit
20 it, but I'll move to admit it later.

21 THE COURT: All right. So you're referring to
22 what part?

23 MR. ISAACSON: So in the last page, beginning
24 with "when we set up our internal VM environment."

25 THE COURT: I'm not seeing that.

1 MR. ISAACSON: So below page 3.

2 MR. WEBB: There it is.

3 MR. ISAACSON: 318. Yes. So page 3 of 3. So
4 this, that paragraph, and then I'm going to go to the first
5 page.

6 So there's just one reference to Oracle lawsuit,
7 and I'm not going to mention that, and I'll move to admit
8 this and the judge can rule on it later.

9 THE COURT: Do you have an objection to that?

10 MR. WEBB: You're going to read the paragraph
11 right after the --

12 MR. ISAACSON: Uh-huh, uh-huh.

13 MR. WEBB: I don't see how you can do that
14 without having the contextual issue right in the middle of
15 that.

16 MR. ISAACSON: This is a clearly relevant
17 document, and you're making a fine argument for admitting
18 the TomorrowNow evidence, but I'm trying to make it easier
19 for you now.

20 MR. WEBB: I appreciate that, Bill. But I
21 thought TomorrowNow was something we did address.

22 MR. ISAACSON: I wasn't going to -- I didn't
23 know that was there because I wasn't going to talk about
24 it.

25 MR. WEBB: All right. Fine.

1 THE COURT: All right.

2 (Sidebar conference concluded.)

3 THE COURT: Go ahead, please, Mr. Isaacson.

4 BY MR. ISAACSON:

5 Q. Do you have Exhibit 318 in the front of you?

6 THE COURT: Pardon?

7 MR. ISAACSON: I was asking the witness.

8 BY MR. ISAACSON:

9 Q. Do you have 318 in front of you?

10 A. Yes, I do.

11 Q. All right. Let's look at page 3 but not on the
12 screen.

13 I just want to get some context here. "When we
14 set up" -- you're talking about a question.

15 Mr. Whittenbarger is talking about a question.

16 "When we set up our internal VM environment for
17 a customer," which is virtual machine, "are we assuming
18 they are giving us one or more of their Siebel licenses to
19 set this up at our site?"

20 And then let's go to -- I wanted you to have
21 that for context. Let's look at page 1.

22 A. Yes, I see it.

23 MR. ISAACSON: All right. Now, counsel has
24 given me permission to put the first page of this document
25 on the screen, Your Honor. So if we can put the first page

1 of 318 on the screen, and this --

2 THE COURT: The first page of 318 is admitted.

3 (Plaintiffs' Exhibit 318, page 1 received
4 into evidence.)

5 BY MR. ISAACSON:

6 Q. Mr. Chiu, again that vice-president in your company,
7 this is March 2007, is responding to Mr. Whittenbarger.

8 He says, "Great question and I'm glad you asked.

9 "Our clients can extend their software licenses
10 to us for testing and development purposes, much like they
11 would extend them to a consultant they hire to perform
12 development or testing -- exactly what our virtual
13 environments are for and exactly what we do."

14 So at this point, Mr. Chiu was saying internally
15 in the company that the Siebel licenses could be extended
16 for testing and development purposes, and he was saying
17 that to your environmental engineers; correct?

18 A. Yes, that's accurate.

19 Q. And he was saying that that's exactly what your
20 Siebel environments were doing, testing and development;
21 right?

22 A. That's what they were designed for, yes.

23 Q. And what we've been saying about separate silos and
24 your golden rule about keeping things separately, you told
25 that to customers also; right?

1 A. Yes, we told them that we indeed made sure that,
2 again, overall, customers didn't get anything that they
3 didn't pay for through silos, yes.

4 Q. All right. And that was standard messaging for your
5 sales force; correct?

6 A. Yes. I believe that they took that and used that in
7 the sales process to -- again, the whole idea was to make
8 sure customers knew they wouldn't get something that wasn't
9 theirs.

10 Q. And you had standard messaging tools for your sales
11 force, such as responses to frequently asked questions,
12 that had those messages so your sales force would spread
13 that to your customers and potential customers; correct?

14 A. Yes.

15 Q. And you had, as you grew, a growing sales force;
16 correct?

17 A. Yes.

18 Q. You spent a lot of money over the years on sales and
19 marketing?

20 A. Yes.

21 Q. You spent -- between 2006 and 2010, you probably
22 spent close to \$20 million on sales and marketing; is that
23 right?

24 A. I'm sorry. I don't know the number offhand.

25 Q. Are you comfortable saying it was over \$10 million?

1 A. I'd actually have to look at the numbers.

2 Q. Okay. In actuality, though, at Rimini you were
3 using copies of customers' licensed Oracle software to
4 serve multiple clients; right?

5 A. We were using the generic version of a release to
6 serve as multiple clients that had the same, yes, the
7 reuse.

8 Q. Okay. Let's talk about that, using the generic
9 version of a release.

10 Now, a generic version of a release, you mean by
11 Oracle software that requires a license; right?

12 A. Yes.

13 Q. Okay. And you would get that release from a
14 customer and put it into a general testing and development
15 environment; correct?

16 A. Yes. It was a general development test environment
17 that originally sourced from some particular customer's
18 media, yes.

19 Q. And you did that for PeopleSoft; correct?

20 A. Yes.

21 Q. You did that for Siebel; correct?

22 A. For a few environments. I think it was eight to
23 ten, something like that, early years.

24 Q. And in the early years you also did that for JD
25 Edwards; correct?

1 A. I think we did a few environments in the early years
2 for JDE, yes.

3 Q. Specifically for these testing and development
4 purposes; correct?

5 A. Yes, they were for testing and development, but I
6 don't know how the Siebel or JD Edwards were actually used.

7 Q. All right. The -- and so with respect to these
8 general environments, you were taking customer software,
9 putting it into a general environment, and then using it
10 for multiple customers; right?

11 A. These were all clients who had licensed the same
12 product from Oracle, yes.

13 Q. Well, that -- I'm not sure what you're saying yes
14 to, sir, because you didn't start off by answering my
15 question.

16 You were taking customer specific software, I
17 guess from one of those silos, and putting it into a
18 general environment, and using that for multiple customers;
19 right?

20 A. No, this is back to the -- I'm sorry. If I can
21 explain.

22 It's the installation media we would use to
23 build an environment that a customer would have provided
24 the original source. But, again, this is a single version
25 of the software that would then be used for reuse with

1 customers that had the same exact licenses.

2 Q. You were taking it out of the silo and using it for
3 general customer purposes; right?

4 A. No.

5 Q. Well, let's go over that one more time then. Maybe
6 you and I have a different idea about what a silo is.

7 But you were taking software out of a silo and
8 putting it in a general environment; right?

9 A. No, this is the installation media that's used to
10 build environments. So the installation media we've
11 already said was not part of these individual silos because
12 it was common media across multiple clients.

13 Q. You took -- so the installation media, which
14 would -- by installation media, you're including everything
15 you took off -- you took from downloads from websites;
16 right?

17 A. We took from -- no. A lot of it was loaded up by
18 DVDs again provided from the clients for particular
19 licenses.

20 Q. Some of it was DVDs, some of it was downloads from
21 the Oracle websites; right?

22 A. That, I don't remember the exact source of each
23 environment, but it's possible it came from one or the
24 other. I think we saw it in the slide yesterday from your
25 expert, yes.

1 Q. And we looked at all that library -- I thought I was
2 finished with the library, but we looked at all the library
3 and saw all of that installation media in there as well as
4 the patches, et cetera; right? All of that was being used
5 to set up general environments; right?

6 A. I would say yes.

7 Again, as your expert showed, some of it
8 probably came from -- it looked like he had done the
9 research on that, and it looked like it either came from
10 Oracle's website or customers.

11 But, again, we used the customers' media to
12 build these environments.

13 Q. All right. And you never told your customers that,
14 "By the way, we told you they're separate silos, but what
15 we're really doing is taking installation media and using
16 it for general purposes for whatever -- for multiple
17 customers"? You never told them that; right?

18 A. Well, again, you're talking -- you're talking about
19 the fact that we did talk to customers and told them we do
20 not give them software that's not their licensed rights,
21 yes.

22 Q. I'm talking about the silos, sir. We'll get back to
23 how you told customers that they were within their licensed
24 rights. I'll talk about that later.

25 With respect to these silos, you never told the

1 customers that you were actually taking installation media
2 out of the silos and using it for general development
3 purposes?

4 A. We didn't take them out of the silos.

5 Q. Okay. The -- so let's look at Plaintiffs'
6 Exhibit 219.

7 A. Okay. I'm there.

8 MR. ISAACSON: Hopefully this is pretty easy.
9 This is very early history, September 2006. It's
10 preadmitted, so you can put this on the screen.

11 And blow up the top of it.

12 BY MR. ISAACSON:

13 Q. And this is a list, as of September 2006, of your
14 first customers, with the exception of Leads Customers
15 Growth; correct?

16 A. Looks fairly accurate, yes.

17 Q. Okay. It has start dates, and these are all Siebel
18 customers with the exception of FileNet and City of Flint,
19 and City of Flint has a start date of September 13, 2006.
20 That's your first PeopleSoft customer; right?

21 A. Yes, it sounds right.

22 MR. ISAACSON: Now, can we -- Matt, can we put
23 up Ravin Exhibit 1, the slide?

24 BY MR. ISAACSON:

25 Q. You were here when I showed the jury this in opening

1 statement?

2 A. Yes.

3 Q. Okay. So we have recreated the clients on
4 Exhibit 219 except we've added Leads Customer Growth. All
5 right? Do you see that?

6 A. Yes, I see that.

7 Q. All right. Now, you were building environments at
8 this point. Now, according to what you have stipulated to,
9 and what Professor Davis has testified to --

10 MR. ISAACSON: Can we put up the environments,
11 Matt?

12 BY MR. ISAACSON:

13 Q. All right. These were your first customers, and
14 they had Siebel environments; right?

15 A. If that's what we stipulated to, yes.

16 Q. Yes. And those are environments with copied Oracle
17 software on them; right?

18 A. That would be an environment, yes.

19 Q. Okay. Let me talk about -- I'll come back to this
20 slide later.

21 I want to talk about that SupportWeb. In
22 February 2006, you directed that -- a project to begin to
23 download extracts from Siebel SupportWeb from customers;
24 right?

25 A. I'm sorry. Are we on a particular exhibit?

1 Q. All right. Let's look at Exhibit 206.

2 MR. ISAACSON: All right. And this has been
3 preadmitted.

4 So let's go to page 4 and 5. Well, actually, I
5 think -- this is not an email, so actually we have to start
6 with page 1. Sorry, Matt.

7 BY MR. ISAACSON:

8 Q. This is December 16th, 2005. This is you, Mr. Shay,
9 and Mr. Chiu?

10 A. Yes.

11 Q. It's the beginning of the company, you don't have
12 any customers yet, these are the three top people in the
13 company; right?

14 A. That's correct.

15 Q. Okay. And Mr. Chiu says, "I've put together a
16 summary that details the background of Siebel's SupportWeb
17 knowledgebase, and what we're faced with, in order to
18 enable the same level of self-service to our customers."

19 Now, "self-service to our customers" refers to
20 customers being able to access documentation and support
21 materials on the web so they can answer their own
22 questions; correct?

23 A. Yes. Only the materials they're entitled to see, of
24 course.

25 Q. I'm just -- well, that, I guess, might be what this

1 case is about.

2 But just in terms of answering my actual
3 question about what self-service means, I have that right,
4 don't I, that self-service is when I -- for when IT
5 professionals at companies, or specialized business people
6 who understand these materials, go online and work with
7 materials to help them with their software; right?

8 A. Yes, this refers to customers being able to access
9 the materials they're entitled to and utilize them, yes.

10 Q. And the -- if we can go to page 3. Go down to
11 Objective.

12 "OBJECTIVE: Rimini Street customers are trained
13 Siebel IT professionals who demand a self-service
14 mechanism, and rely on accessible information to resolve as
15 many issues independently as they would by engaging
16 technical support."

17 That's what we were just talking about; right?

18 Your customers are trained professionals who
19 need this support materials on the web to access to answer
20 their own questions?

21 A. Well, they need access to them, whether it's on the
22 web or locally, they need to be able to access them, yes.

23 Q. All right. And it says at the bottom -- now, you're
24 talking about -- and what you're talking about here is
25 Siebel SupportWeb which was Oracle's website providing that

1 knowledge and information; right?

2 A. The Siebel SupportWeb was Siebel's independent
3 website before it was merged into Oracle's website, yes.

4 Q. Right. And you say at -- and it says at the bottom
5 of page 3, "While this can be a very manual download
6 process of sequentially pulling each and every knowledge
7 item, we can develop an automated script or program that
8 can systematically execute a pdf download of all TechNotes,
9 Alerts, FAQs, Troubleshooting Guides, Rimini Street can
10 help archive and catalog those knowledge items for each
11 customer account."

12 So you're talking about creating -- it's going
13 to be too hard to pull down -- there's so much information
14 on the SupportWeb, it's going to be hard to pull it down
15 manually, so you're going to do it on an automated basis.
16 That's what you're talking about; right?

17 A. Yes. Each customer is entitled to a lot of
18 information, yes.

19 Q. And so going to page 4, the -- at the bottom it
20 says, "Siebel SupportWeb contains a huge repository of
21 publicly visible Service Request descriptions and
22 resolutions, and serves as an established self-service
23 tool."

24 That's correct; right?

25 A. Yes, I believe that was true with the Siebel

1 SupportWeb format, yes.

2 Q. And you say above that, "These documents should be
3 reviewed and rewritten/edited by our Support Consultants
4 for applicability to customers and archived in a Rimini
5 Street database."

6 Right?

7 So what you were going to do is take all of
8 these Oracle support documents, review and rewrite or edit
9 them, and put them in a Rimini Street database; correct?

10 A. It looked like that was Dennis Chiu's proposal, but
11 that didn't happen.

12 Q. All right. Well, we'll come to that.

13 He says on the next page, "We will initiate a
14 project effort to automate the replication of publicly
15 visible Service Request postings that meet Rimini Street's
16 format and content types. This process will entail
17 extensive efforts to simulate a searchable tool."

18 Now, you say this didn't happen. That's sort of
19 interesting because you've been telling me all these other
20 things you didn't know whether they happened or not. Why
21 do you say this didn't happen?

22 A. Well, I told you I know about some things and I
23 don't know about others. This one I know because the
24 customers -- we never had a place where we were rewriting
25 stuff.

1 Q. Well, I'm talking about downloading from Siebel
2 SupportWeb?

3 A. Right. But I think you're confusing that between
4 downloading and what the second -- you just asked me about
5 whether we were rewriting documents, and that's something
6 that -- this one is about downloading.

7 Yes, of course, we built a tool to download from
8 Siebel SupportWeb.

9 Q. Okay. Thank you for clarifying that.

10 So let's just get this straight as to what you
11 agree to and what you don't agree to.

12 You agree that there was downloading on an
13 automated basis from Siebel SupportWeb of the Oracle
14 documentation. You disagree that you then went about
15 rewriting or editing those documents for your customers?

16 A. That's correct.

17 MR. ISAACSON: Okay. And the -- can we look at
18 210. This has been preadmitted.

19 BY MR. ISAACSON:

20 Q. So we can look at page 1, and let's look at the
21 bottom of that.

22 This is Mr. Chiu writing to Mr. Whittenbarger
23 and Ms. Bola, and it says at the bottom, "Dan has created a
24 methodology" -- and this is in June 2006 now?

25 A. Yes.

1 Q. "Dan has created the methodology and framework for
2 the SupportWeb extract process, including the process to
3 capture daily incrementals from SupportWeb which will then
4 be integrated into the extract database."

5 At this point you're doing daily downloads from
6 the Siebel SupportWeb and putting it into your database;
7 right?

8 A. That's correct. And goes back to what we talked
9 about as Siebel having a very unique structure in the way
10 that its systems worked, and we went from weekly downloads
11 to daily downloads, yes.

12 Q. Right. And he then says, "In parallel, he's
13 prototyping the design documentation."

14 That's the Oracle design documentation; right?

15 A. I'm sorry, where is --

16 Q. "In parallel, he's prototyping the design
17 documentation."

18 That's the Oracle design documentation; correct?

19 A. I think that's relating to something else. I don't
20 think that's Oracle.

21 Q. He says, "The design documentation will then be
22 passed to John." Is that Mr. Whittenbarger?

23 A. This looks more like this relates to customizations
24 that we do for Siebel.

25 Q. My question is really easy.

1 Is John Mr. Whittenbarger?

2 A. John is Mr. Whittenbarger, yes.

3 Q. And so this design documentation was going to be
4 passed to Mr. Whittenbarger "for reviews, updates and
5 edits," so it could be made into a user guide document;
6 right?

7 A. Yes.

8 Q. Okay.

9 A. That's what it says.

10 Q. All right. And so let's look at Plaintiffs'
11 Exhibit 5 which has been preadmitted.

12 A. Yes, I'm there.

13 Q. Now, this is now again in June 2006, this same
14 period of time, this is June 28th, and -- all right. And
15 we might even have looked at this yesterday, but I want to
16 look at another part of it, page 4. Okay?

17 A. Yes, I'm there.

18 Q. The "sounds good paragraph" at the top.

19 Okay. This is Mr. Chiu writing to you.

20 "Sounds good. We're getting the wheels rolling
21 on some of the tasks for them already."

22 And he talks about, of course, the creation and
23 delivering of the SupportWeb extract DVD?

24 A. Yes.

25 Q. Now, that DVD refers you're downloading from Siebel

1 SupportWeb, and you're putting it on to DVDs; right?

2 A. Yes. For the customers we would put the files
3 they're entitled to onto a DVD and then ship it to the
4 customer.

5 Q. So in this case, you're creating one DVD, and as he
6 says in the next paragraph, "Once packaged, we use that
7 extract as the basis of the DVD for Albridge, Brandes,
8 Caterpillar and now FileNet."

9 Right? So you're doing an extract, you're
10 creating one DVD, and you're giving copies of the same
11 things to multiple customers; correct?

12 A. Yes, all of them were entitled to the same files.

13 Q. All right. And that's because -- and you say that,
14 these are all Siebel licensees, and you're saying that they
15 were entitled to this under the Siebel license. Is that
16 your testimony?

17 A. Yes, because they were all on support and ended
18 support around the same time. So all the files that were
19 available up to that time were then put on that DVD and
20 shared with all --

21 Q. Right. But you would use one customer log-in to the
22 Siebel SupportWeb, download, and then give it to multiple
23 customers; right?

24 A. Yes, in this particular design early on in the
25 company, that's why I mentioned this was different than as

1 it evolved over time, because we did use one company's
2 log-in -- all of them had log-ins, but it used one to do
3 this extract for all of them, yes.

4 Q. All right. In fact, let's look at Exhibit 7.

5 A. Uh-huh.

6 Q. Which has been preadmitted, so we can look at this
7 on the screen.

8 Let's start at the back of this email, page 2.
9 It takes a little bit of work, but be patient with me.

10 This is Mr. Whittenbarger with Mr. Chiu and
11 Mr. Slarve. Do you see that?

12 A. Yes.

13 Q. It says July 10, 2006, a little bit after late June.

14 And he's saying -- he's talking about the
15 SupportWeb extract and how it's scheduled and running each
16 day. Do you see that?

17 A. Yes.

18 Q. And you're using the Brandes user name and password;
19 right?

20 A. That's what it says.

21 Q. Okay. And he says, "Just curious what our policy is
22 for using user name/password of client whose support has
23 expired. Should I leave it running under their username
24 for now?"

25 So the Brandes password had expired; correct?

1 A. That's what it says, yes.

2 Q. So what Mr. -- I believe it's Mr. Whittenbarger, and
3 Mr. Slarve responds, he gives the Leads Customer Growth
4 password; right?

5 A. Yes, that's what it says, that they -- apparently
6 they decided not to use the Brandes and switched to another
7 password for a customer who has live support.

8 Q. And Leads Customer Growth at this point wasn't even
9 operating the Siebel software, were they?

10 A. No, but they were a licensee, and they did have
11 support they had paid for.

12 Q. All right. So you are using the Leads Customer
13 Growth password to access the Siebel support website and
14 download all of those support materials so that you could
15 hand them to multiple customers. That's correct, isn't it?

16 A. Yes.

17 Q. All right. And it's your understanding that if a
18 customer's log-in credential is used to download materials
19 that that customer was not licensed to, that would be
20 improper; right?

21 A. Yes. But, again, coming back to -- specifically to
22 the way the Siebel website worked in those early years, we
23 had only one methodology to get that information.

24 Q. All right. And, for example, if we can look at 214.

25 COURTROOM ADMINISTRATOR: It's not admitted.

1 MR. ISAACSON: Not admitted.

2 Do we have an objection?

3 MR. WEBB: No objection, Your Honor.

4 THE COURT: It is admitted.

5 (Plaintiffs' Exhibit 214 received into
6 evidence.)

7 MR. ISAACSON: So please put this on the screen.

8 BY MR. ISAACSON:

9 Q. Now, I'm going to go to page 5 of 6. And just
10 looking at this, this -- what you're discussing here is
11 just basically what the package is going to look like when
12 you give the customers the Siebel SupportWeb DVD; right?

13 A. Yes, apparently.

14 Q. And on page 5 --

15 MR. ISAACSON: You can blow up that part in the
16 middle.

17 BY MR. ISAACSON:

18 Q. This is what you're going to tell -- this is
19 actually what you're going to give the customer. It's
20 going to be on top of the DVD or attached to the DVD
21 somehow, or CD.

22 "This CD gains an archive of data available to
23 Oracle/Siebel Support Services customers for their use and
24 download on Oracle's Siebel SupportWeb website as of" -- a
25 certain date. "The data has been extracted and placed on

1 the media by Rimini Street, Inc., at the request of Siebel
2 licensee and Rimini Street client FileNet corporation."

3 This is specifically for FileNet, but you would
4 give this same -- for Albridge, you would say at the
5 request of Albridge; right?

6 A. Yes. FileNet's IBM. Yes.

7 Q. But you weren't actually -- when you -- when you
8 went and got the DVD information, you weren't actually
9 using FileNet's user name or passwords; right? You were
10 using, like, Leads Customer Growth?

11 A. Apparently so, yes.

12 Q. And you told customers, because you agreed, that the
13 entire contents of this media are the intellectual and
14 copyrighted property of Oracle Corporation?

15 A. Yes, I believe there's several discussions around
16 the fact that we wanted to make sure that Oracle's
17 intellectual property copyright was carried.

18 MR. ISAACSON: All right. Can we go back to
19 Ravin 1 in that slide. And put the environments in there,
20 Matt.

21 We've also listed who got these DVDs from your
22 first customers. Would you put those in there.

23 (Off the record.)

24 THE COURT REPORTER: Your Honor, could we have a
25 short break?

1 THE COURT: Well, I'm sure there's others who
2 having a similar thought.

3 We'll take a short break, ladies and gentlemen,
4 approximately -- 10 to 20 minutes, depending on when you
5 are ready.

6 The usual admonition not to discuss the case, or
7 allow it to be discussed in your presence applies, and keep
8 an open mind as we go through the testimony and evidence.

9 We'll take our recess. Please let my court
10 clerk Dionna know when you're ready to return, and that's
11 what we'll do. You may step down. Thank you.

12 COURTROOM ADMINISTRATOR: Please rise.

13 (Jurors exit courtroom at 9:44 a.m.)

14 (Recess from 9:44 a.m. until 9:59 a.m.)

15 (Jurors enter courtroom at 9:59 a.m.)

16 COURTROOM ADMINISTRATOR: Court is again in
17 session.

18 THE COURT: All right. Have a seat, please.

19 The record will show we concluded the first
20 morning break. The jury's all present. Counsel and
21 parties are present. We're in open court.

22 And, Mr. Isaacson, you may continue with your
23 cross-examination of Mr. Ravin.

24 MR. ISAACSON: Thank you, Your Honor.

25 Can we get Ravin Exhibit 1 up there again? We

1 have the environments, we have the DVDs.

2 All right. There's the customers, early
3 customers who got those DVDs.

4 BY MR. ISAACSON:

5 Q. And you also had the library in existence during
6 this period; right?

7 MR. ISAACSON: Matt, can you put that up?

8 BY MR. ISAACSON:

9 Q. Correct?

10 A. Excuse me?

11 Q. You had that library we've been discussing, the
12 Siebel software, during this period; right?

13 A. Again, I don't know exactly what we had in the
14 repository for the installation media.

15 Q. Okay. The -- let's talk about those two clients
16 there, LCG and Beekley.

17 Oh, before that, I just want to finish one
18 thing. 448, PTX 448, which has been preadmitted so it can
19 go right on the screen.

20 January -- I'm sorry, my page flipped here. I'm
21 going to ask you to look at 744.

22 A. Seven --

23 COURTROOM ADMINISTRATOR: 744.

24 MR. ISAACSON: Yes. Which has also been
25 preadmitted.

1 THE WITNESS: I'm sorry. You said 77 --

2 MR. ISAACSON: 744. It's in your second binder.

3 THE WITNESS: I have 726 to 789.

4 COURTROOM ADMINISTRATOR: 744.

5 MR. ISAACSON: All right. Will someone get me a
6 744, and I'll come back to that, sir. Will someone get me
7 multiple copies of 744. I'll come back to that.

8 BY MR. ISAACSON:

9 Q. Let's talk about that first customer, Leads Customer
10 Growth.

11 A. Yes.

12 Q. Now, Mr. William Leake was the CEO of Leads Customer
13 Growth?

14 A. Yes, he was.

15 Q. He -- you knew him, I believe, since the third
16 grade?

17 A. Yes, indeed.

18 Q. He was the first customer of Rimini Street?

19 A. Yeah, he did agree to be our first customer.

20 Q. All right. And it's hard to get your first
21 customer. That's your view; right?

22 A. I think anyone who has ever started a business would
23 agree that getting the first customer is the most difficult
24 thing you can do.

25 Q. And Leads Customer Growth was in the business of

1 Internet marketing services; right?

2 A. Yes.

3 Q. And they wanted you to pay for their services?

4 A. Yes.

5 Q. Okay. And you wanted a first customer?

6 A. Yes. It was a good marriage, yes.

7 Q. All right. So what happened was you agreed to pay
8 LCG, and they agreed to go on Siebel support?

9 A. Well, they were looking for a new CRM system, so it
10 looked like a good opportunity to get them on Siebel and
11 take the support and have a first referenceable customer,
12 yes.

13 Q. Was that a yes, sir?

14 A. I'm sorry. First referenceable customer, yes.

15 Q. Was that a yes, sir? You agreed to pay them and
16 they agreed to pay you?

17 A. Yes.

18 Q. All right. And they were not on Siebel software at
19 this time. They didn't have any Siebel software, they
20 didn't have a Siebel license, they weren't using it. It
21 was your idea that they go get Siebel; right?

22 A. Well, I think we talked about it, and they agreed
23 that if we helped them with the -- afford the software and
24 helped them with the service, yes, that they could afford
25 to do this.

1 Q. Was that a yes? That was your idea that they go get
2 Siebel software?

3 A. Yes.

4 Q. Okay. You weren't offering them 50 percent off of
5 something, they weren't even paying for it?

6 A. No, they wanted to put in a CRM system so we worked
7 an arrangement, yes.

8 Q. It was your idea that they get the Siebel; right?

9 A. Actually, I don't remember if it was exactly my
10 idea, but I know we came up with it together, so I
11 certainly was part of that, yes.

12 Q. And what happened was that had you agreed that they
13 would -- you agreed with them that they would purchase
14 Siebel software, but you would, in effect, be paying for it
15 because you would be buying their marketing services.
16 That's what happened; right?

17 A. Yes.

18 Q. And what happened then was that you said your
19 company set up a conference call with Siebel in which your
20 people were going to pretend that they were working for
21 Siebel -- for Leads Customer Growth?

22 A. Not pretend, they were acting as consultants as part
23 of our overall implementation plan, yes.

24 Q. But they were going to pretend that LCG was actually
25 interested in getting a license; right?

1 A. Well, they were interested in getting a license and
2 ready to buy one, yes.

3 Q. Well, they weren't interested in getting a license,
4 they were interested in having you pay for their marketing
5 services, and you said, well, fine, go get a Siebel license
6 and we'll work that out; right?

7 A. No, that's not true.

8 MR. ISAACSON: All right. Let's look at 537.

9 This has been preadmitted so we can put this on
10 the screen.

11 All right. And can we blow up --

12 THE WITNESS: One second, please.

13 MR. ISAACSON: Blow up the top of it. It's
14 right behind -- right behind 497.

15 THE WITNESS: Got it. Thank you.

16 BY MR. ISAACSON:

17 Q. All right. So let's go to the bottom, "Laurent."
18 Mr. Lee is writing to someone at Siebel.

19 A. Yes, I see that.

20 Q. And he says, "I'll have a senior" -- and he's
21 talking about a phone call. Do you see that?

22 A. Yes.

23 Q. "I'll have a senior member of my technical team
24 there, as well as someone who has installed Siebel at other
25 companies before."

1 All right? The senior member of his technical
2 team was someone from your company; right?

3 A. That's correct.

4 Q. All right. And then Mr. Shay -- that's one of your
5 cofounders; right?

6 A. Yes.

7 Q. This is January 2006 -- says,

8 "Can we have a call with the Siebel sales guy
9 and Bill Leake at LCGrowth to get prices for Siebel...."

10 "We're going to say that LCGrowth is interested
11 in getting a license. Bill is the CEO of LCGrowth, I will
12 be on his tech staff. You will be the one doing the
13 implementation as a consultant."

14 He's actually going to say that he's on the
15 technical staff of LCGrowth; right?

16 A. Yes, which was true.

17 Q. Okay. He's not on the technical staff of LCGrowth.
18 He doesn't work for LCGrowth, does he?

19 A. He doesn't have to, he's acting as a consultant.

20 Q. I see. So you're going to tell them that he works
21 for LCG -- that he's on the tech staff of LCGrowth, but
22 you're not going to say this is for outside support; right?

23 A. Well, I don't know why we would do that. They're
24 simply working to get a license put in place.

25 Q. All right. And let's look at 538, the next tab.

1 Now, what happened, what we saw in the previous
2 email, is that -- that Mr. -- that Laurent had been copied
3 on that email where you said we're going to say that
4 LCGrowth is interested and I will be on his tech staff.
5 Right?

6 A. Laurent being the Oracle sales rep, yes.

7 Q. Right. Right.

8 So what happened was Mr. Shay said this, and he
9 accidentally copied someone from Oracle; right?

10 A. Yes.

11 Q. And you weren't happy about that. You did not want
12 Oracle to know what Mr. Shay told you. You didn't want
13 Oracle to know that you were -- that you're going to say
14 that LCGrowth is interested in getting the license. You
15 did not want him to -- Oracle to know that Mr. Shay was
16 not -- was going to say I'm on his tech staff; right?

17 A. No, the client didn't want to disclose that Rimini
18 Street was involved in the transaction because they were
19 afraid that Oracle wouldn't sell them the license.

20 Q. Right. The client. You're referring to your
21 friend, Mr. Leake?

22 A. Yes. Well, we weren't that close. He was the guy
23 they chased around the schoolyard instead of me, so it was
24 good.

25 Q. All right. So on 538 you said, "I'm not happy. Tom

1 knows. These kinds of errors are serious stuff."

2 You didn't want Oracle to know what you were up
3 to; right?

4 A. The client didn't want Oracle to know that Rimini
5 Street was involved.

6 Q. All right. And let's look at 539, on this subject,
7 what the client wanted.

8 So this is between Mr. Leake and you at the
9 beginning of January 2006. All right?

10 He's saying at the bottom -- and this is
11 actually February 1st, 2006, I'm guessing, because it's
12 February 2nd up above. But, in any event, it's in the
13 beginning of 2006.

14 "If you aren't disclosing your customer name,
15 should I go ahead and sign the Rimini agreement tonight
16 even ahead of purchasing the actual licenses?"

17 And what you're talking about here is you're not
18 going to disclose LCGrowth as a customer of Rimini Street,
19 announce that you have your first customers.

20 You're not going to do that because you want to
21 go ahead and -- but you're not going to do that, but you're
22 going to go ahead and sign the agreement with Rimini;
23 right?

24 A. Yes, that's what it says, to sign the agreement with
25 Rimini Street first before they got their Oracle license

1 done.

2 Q. Right. You were trying to keep it under wraps that
3 you had this customer until they got their Oracle license?

4 A. That was the -- seems to be the -- what was written,
5 yes.

6 Q. And then 5355, which would be in your second binder?

7 A. Did you say 5 --

8 Q. 5355.

9 COURTROOM ADMINISTRATOR: It's not admitted.

10 MR. ISAACSON: It's not admitted. I'm going to
11 ask -- can I have a minute to talk to --

12 THE COURT: Yes.

13 MR. WEBB: I'm sorry, Judge, can we approach?

14 THE COURT: Yes.

15 (Sidebar conference held as follows:)

16 MR. WEBB: This is related a little bit to
17 TomorrowNow. To be clear, we have no problem with them
18 saying that TomorrowNow was on the market and it was a
19 competitor. Our problem becomes the lawsuit, the
20 concession of infringement --

21 MR. ISAACSON: I'm not going beyond that right
22 now.

23 MR. WEBB: So if you're good with that. If
24 you're good with that, I'm good with that.

25 THE COURT: All right. I understand.

1 MR. WEBB: Thank you.

2 (Sidebar conference concluded.)

3 MR. ISAACSON: Move to admit 5355.

4 MR. WEBB: No objection, Your Honor.

5 THE COURT: It's admitted.

6 (Plaintiffs' Exhibit 5355 received into
7 evidence.)

8 MR. ISAACSON: Let's put this on the screen.

9 BY MR. ISAACSON:

10 Q. This is February 3rd, 2006, another day later.

11 All right. Mr. Shay is asking you to -- asking
12 you, is this support deal, referring to the one with
13 LCGrowth, one we want to advertise, or should we wait for a
14 bigger real customer; right?

15 A. Yes, that's what it says.

16 Q. He knew he didn't have a real customer yet; right?

17 A. Well, a real customer means we sign an agreement, we
18 get paid. So it wasn't the best customer we'd like, but
19 it's a start.

20 Q. Well, you weren't getting paid. Money was just
21 changing hands; right? You were giving to them, they were
22 giving money back. It wasn't a real customer?

23 A. It's not uncommon in the software industry.

24 MR. ISAACSON: I object. I would ask that the
25 answer be stricken on the grounds of foundation and --

1 THE COURT: It will be stricken and the jury
2 admonished to disregard it.

3 MR. ISAACSON: All right.

4 BY MR. ISAACSON:

5 Q. Just with respect to you, all that -- they weren't
6 actually paying you. The money was just going back and
7 forth, and there was no net payment to your company; right?

8 A. Well, I do believe they wrote us checks and paid for
9 the services, yes.

10 Q. Did you hear my question, sir?

11 Okay. I asked you about net payments. In other
12 words, the money -- the same amount of money was going back
13 and forth, or, in fact, more money was going in the
14 direction of LCGrowth than was coming back to you; right?

15 A. That I don't know how much changed hands from one
16 way or the other. They billed us for marketing services
17 which they delivered, and we delivered service to them,
18 yes.

19 Q. Right. We'll come back to whether you delivered
20 service to them. But no net amount of money was coming
21 your way from this customer; right?

22 A. I don't know that to be true.

23 Q. This customer had zero-dollar value to Rimini
24 Street; right?

25 A. I don't know that for a fact.

1 Q. How many -- you don't know that for a fact? It's
2 your first customer?

3 A. Well --

4 Q. You don't know for a fact whether that customer had
5 zero-dollar value?

6 A. No. We billed them for services, they billed us for
7 services. I don't know what that net was.

8 Q. The actual deal that was happening here, though, you
9 agree with me on this, is that Rimini Street was in effect
10 indirectly paying Leads Customer Growth to purchase Siebel
11 software?

12 A. We were reimbursing them for the costs, uh-huh.

13 Q. Now, going back to 5355?

14 A. Uh-huh.

15 Q. Okay. Mr. Shay asks you should you wait for a
16 bigger real customer, and one of the concerns you had about
17 disclosing publicly LCG as a customer is that there was
18 another company in the marketplace, TN, that's TomorrowNow;
19 right?

20 A. Yes.

21 Q. Okay. And that's a company you know well because
22 you were the former CEO of that company; right?

23 A. No, I was never the CEO.

24 Q. You were the former head of support for that
25 company?

1 A. No, I wasn't.

2 Q. Tell me your title with TomorrowNow.

3 A. I was president.

4 Q. President. Sorry.

5 And you were one of the founders of support at
6 TomorrowNow?

7 A. Yes, for PeopleSoft and JD Edwards, yes.

8 Q. I'm sorry. You weren't one of the founders, you
9 were the founder of support at TomorrowNow?

10 A. No, I actually had a partner, 50 percent, yes.

11 Q. All right. So you know folks at TomorrowNow, and
12 so your concern -- and Mr. Shay is telling you they're
13 going to know that LCG is not a real customer?

14 A. Well, he's going to know that it's not IBM.

15 Q. Okay. That's not what Mr. Shay said; right?
16 They're going to actually know -- they're going to look up
17 who this is. They're going to figure out this is not a
18 real customer.

19 A. They're going to figure out, it's a very small
20 company, that's for sure.

21 Q. Okay. The -- now, before the Siebel license was
22 entered, you were the one actually acting as a business
23 advisor to LCGrowth about those license terms; right?

24 A. I don't recollect exactly, but I assume so.

25 Q. Okay. And in terms of the marketing agreement that

1 you entered -- I'm sorry, not the marketing agreement, in
2 terms of the support agreement you entered with LCG, the
3 total amount that LCG agreed to pay Rimini Street was \$100
4 a month for a year, \$1200; right?

5 A. I don't remember the exact terms, but that sounds
6 about right.

7 MR. ISAACSON: Okay. I guess to save time, you
8 can respond to this later, I'll move to admit PTX 863 which
9 is that contract.

10 BY MR. ISAACSON:

11 Q. Then as we said --

12 THE COURT: Wait a minute.

13 MR. WEBB: Give me a few seconds to get there.

14 MR. ISAACSON: I'm not going to ask you any
15 questions about it, sir.

16 THE COURT: Is there any objection to 863?

17 MR. ISAACSON: I don't have it on my list as
18 preadmitted, so I don't know.

19 COURTROOM ADMINISTRATOR: I have it withdrawn
20 from --

21 MR. WEBB: That's what we have too.

22 MR. ISAACSON: Oh, I'm withdrawing it because --
23 we can take that up later, Your Honor.

24 BY MR. ISAACSON:

25 Q. Now, LCG actually had no use for the Siebel software

1 because it did not implement the software; right?

2 A. That's incorrect.

3 Q. Are you saying that LCG Growth would have had a use
4 for the software?

5 A. Yes. They were a business, and they wanted to build
6 a CRM system, but they didn't implement Siebel because it
7 was too expensive in the end, and they bought a competing
8 product.

9 Q. The -- so it's your testimony that LCG Growth would
10 have had a use for the Siebel software; is that right?

11 A. Yes. Every business has to care for its customers
12 and keep track of its contracts, and LCG was a business.

13 MR. ISAACSON: All right. I need to -- the
14 depositions.

15 Your Honor, I don't know if you've got copies of
16 the depositions, the deposition for November 18th of 2011.

17 COURTROOM ADMINISTRATOR: Of who?

18 MR. ISAACSON: Mr. Ravin.

19 Your Honor, at page 428, beginning at line 18,
20 we would like to play this for the witness, running through
21 line 6 of the following page.

22 THE COURT: You may do so.

23 MR. ISAACSON: All right. Matt.

24 BY MR. ISAACSON:

25 Q. Now, you -- this is more for the jury than you, but

1 you were deposed in this case, and you were deposed under
2 oath, and you gave testimony under oath; correct?

3 A. That's correct. Several times.

4 MR. ISAACSON: Matt, go ahead and display.

5 (Videotape deposition of Seth Ravin played.)

6 BY MR. ISAACSON:

7 Q. And you testified previously under oath, you said
8 you didn't -- you wouldn't be able to say what LCG Growth
9 would have any use for.

10 Today you know -- your testimony is you do know
11 what they had use for; is that right?

12 A. No, I think you're misunderstanding.

13 I said that they are a small business, and every
14 business has to take care of its customers.

15 I was referring specifically of the question of
16 what would LCG use the software for day to day.

17 I was talking generally. Any business needs to
18 take care of its customers.

19 Q. All right. So when you testified under oath
20 previously, you couldn't say what LCG Growth would have --
21 how it would use the implemented software.

22 Today you're saying but generally they would
23 have used it?

24 A. Yes. Every business has to care for its customers
25 to keep track of records.

1 Q. So previously, specifically you didn't know what
2 they would use it for, but today generally they would have
3 had a use for it?

4 A. It's CRM software which is designed to take care of
5 customers. Yes.

6 Q. Okay. Plaintiffs' Exhibit -- now, LCG Growth never
7 implemented the Siebel software; right?

8 A. That's correct. They implemented competitor
9 software.

10 Q. And you don't recall Rimini ever providing any
11 support services to LCG Growth; right?

12 A. Actually, we worked with them to design an
13 implementation plan, and we were going to implement that
14 software for them, but they ran out of money and couldn't
15 afford it, it was too expensive.

16 Q. Did Rimini Street support LCG Growth on its software
17 after May 2006?

18 A. I don't remember the exact date, but they never
19 implemented the software.

20 Q. All right. Well, for the exact date let's look at
21 Plaintiffs' Exhibit 218.

22 A. I'm sorry. Which number was that?

23 Q. 218, which has been preadmitted.

24 A. Yes, I'm there.

25 Q. All right. And does this tell you that by May 2nd,

1 2006, that LCG Growth had decided not to proceed with the
2 implementation?

3 A. Yes, that's what it says in my email.

4 Q. All right. And after that, Rimini Street kept a
5 copy of LCG's Siebel software on the Rimini systems; right?

6 A. According to whatever our decommissioning plan was,
7 yes.

8 Q. And LCG -- Rimini used LCG's name then to attend --
9 to register as representatives of LCG at Oracle events;
10 right?

11 A. I don't remember exactly, but it wouldn't be
12 uncommon to use a customer's credentials to enter an event,
13 yes.

14 Q. All right. And these are events where you get
15 information about what Oracle's doing and to help you with
16 your business and supporting software; right?

17 A. Yes. I mean, they're general events that customers
18 are allowed to bring their support to, yes.

19 Q. And LCG Growth never used Rimini Street support, but
20 it provided your first references; right?

21 A. Provided us references for being a great company and
22 for being a worthy partner, yes.

23 Q. Okay. Let me get that straight.

24 So they recommended you as a great company and a
25 worthy partner.

1 This was a customer, a customer, who never used
2 the Siebel software, who never got support for the Siebel
3 software, and who you were paying to be a customer.

4 That was your first references who told other
5 companies for you that you are a great -- a great company,
6 and --

7 A. Great business partner.

8 Q. -- and a great partner. That's what happened?

9 A. Sure. Yeah.

10 Q. Okay.

11 A. I mean, that's the first customer. You do what you
12 have to to get a first customer going.

13 Q. And what you had -- no, sir. You don't always do
14 what you have to do. You can be honest about it, can't
15 you?

16 You don't pay people to be your first customer
17 and then have them go tell other people that you're a great
18 company and a great partner and they're your customer?

19 A. Well, Oracle put out a piece as well.

20 MR. ISAACSON: Your Honor, my question is about
21 this company.

22 THE COURT: The response will be stricken.

23 BY MR. ISAACSON:

24 Q. Okay. What you did was dishonest, sir, wasn't it?

25 You paid someone to say they were your first

1 customer, and they went out and gave your first references
2 and said you were a great company and a great partner.

3 A. That is not a way to characterize it in my opinion.

4 Q. All right. You do agree that they gave you your
5 first references?

6 A. Yes.

7 Q. They gave you your references, for example, for
8 Albridge Solutions; right?

9 A. If that was the second customer, then I bet we used
10 them to help us close that deal.

11 Q. Well, I think they were third and fourth. Your
12 second customer was Beekley. We'll come back to that.

13 A. Yes.

14 Q. By the way, in terms of how much you paid LCG
15 Growth, did you pay him more than a million dollars?

16 A. Pay him more than a million dollars? No.

17 Q. You're sure of that?

18 A. That I'm pretty sure of. We didn't have that kind
19 of money.

20 MR. ISAACSON: Okay. I would like to show him
21 from his deposition page 419, the same, November 18th, '11,
22 beginning at -- I don't have the video cut so I would show
23 him the transcript, line 6 through line 15.

24 COURTROOM ADMINISTRATOR: Which page is that,
25 Counsel?

1 MR. ISAACSON: Page 419.

2 COURTROOM ADMINISTRATOR: Thank you.

3 THE COURT: You may do so.

4 BY MR. ISAACSON:

5 Q. All right. Do you have page 419 in front of you,
6 sir?

7 A. Yes, I do.

8 Q. You were asked the question,

9 "How much has Rimini Street paid Mr. Leake and
10 his company from the inception of the relationship?

11 "ANSWER: I wouldn't know.

12 "QUESTION: Approximately?

13 "ANSWER: I wouldn't know.

14 "QUESTION: Is it more than \$100,000?

15 "ANSWER: I wouldn't know.

16 "QUESTION: Is it more than a million dollars?

17 "ANSWER: I wouldn't know."

18 You said under oath that you didn't even know
19 whether you paid him more than a million dollars; right?

20 A. No. I don't know.

21 Q. And those customers like Albridge who got references
22 from LCG Growth, you never told them that you were paying
23 this customer to be your first customer. You never told
24 them that, did you?

25 A. That's your characterization, not mine.

1 Q. I'm asking you what you told your customers, the
2 customers who got references from LCGrowth. You never told
3 them that you were paying LCGrowth, did you?

4 A. We didn't pay LCG Growth. We worked out an
5 arrangement, and they went ahead and gave us the reference
6 that they felt comfortable giving.

7 Q. I understand they felt comfortable giving it, but
8 you are putting money in their -- you just said we weren't
9 paying them. You put money in their pocket, sir, didn't
10 you?

11 A. We were a customer of LCG for many, many years, yes.

12 Q. And you didn't tell the customers who were getting
13 references that they -- that you were paying LCG Growth
14 money. You didn't tell them that, did you?

15 A. As far as the fact that they were a vendor of ours
16 as well? No, I'm not sure whether I did or didn't tell
17 them that.

18 Q. All right. And you actually had Mr. Leake speak to
19 the press for you, didn't you?

20 A. Again, I don't recollect, but it wouldn't surprise
21 me.

22 Q. Do you recall that in August 2006 that he said in an
23 article -- this is months after he's not implementing the
24 Siebel system, that he retained Rimini Street for
25 maintenance believing his support will help him stretch the

1 life of the application for five to ten years.

2 Do you remember him making statements like that?

3 A. Don't remember it specifically.

4 MR. ISAACSON: All right. Let's look -- is 1431
5 in the binder? I think that's separate, right.

6 BY MR. ISAACSON:

7 Q. By the way, while we're getting that, Mr. Leake is
8 now a vice-president at Rimini Street; right?

9 A. Actually, I don't know his current title. He is --
10 I think he's reduced to a part-time basis at this point.

11 Q. He has been a vice-president at Rimini Street;
12 right?

13 A. Yes. He joined us a couple years ago, yes.

14 Q. And he's still working on a part-time basis for you?

15 A. I believe that's his status, yes.

16 Q. All right. And after -- and after he -- the
17 decision was made in May 2006 that LCG Growth was not
18 implementing the Siebel software, you kept Siebel -- you
19 kept LCG Growth on your customer list that you shared with
20 other customers?

21 A. Sure. It was a signed contract.

22 Q. All right. So after May 2006, they don't have
23 Siebel software, you're not providing them any services,
24 and you have a customer list that you're sharing with other
25 customers, and they're on it?

1 A. Yes.

2 Q. And you also kept them on your website. You had a
3 website that would -- you sort of scroll through customers,
4 and LCG Growth was one of them?

5 A. Yes.

6 MR. ISAACSON: Okay. Do we have --

7 COURTROOM ADMINISTRATOR: It's been withdrawn on
8 the list.

9 MR. ISAACSON: I'm not seeing to admit it, I'm
10 going to show it to -- well, I'll come back to that.

11 BY MR. ISAACSON:

12 Q. Let me do the -- let's talk about those local
13 environments on the Rimini system some more.

14 Now, I think we've agreed that you had those
15 environments for your first customers, and they had Oracle
16 software, copies of Oracle software on them; right?

17 A. We agreed on that for JD Edwards and Siebel, we had
18 for the early customers. But PeopleSoft we kept all the
19 way until we stopped using environments locally on our
20 systems in July of '14.

21 Q. Now, during this time in your early years, and
22 actually 2006 through 2011, when you had customers, you
23 would give them backups of their software; right?

24 A. I'm sorry. Can you explain what you mean by that?

25 Q. So you would give them backup copies of their

1 software so they could have a safe backup so they could
2 store that in a safe place; right?

3 A. No, we did not provide backups to the customers.

4 Q. All right. Did you provide any kind of archives to
5 the customers?

6 A. Yes, we gave them copies of their download archives
7 which we packaged up and delivered to them, yes.

8 Q. And you would ship those on USB drives?

9 A. I think they were DVDs in the early days and
10 probably switched to USB as technology changed, yes.

11 Q. All right. And you would then keep your own backups
12 with an offsite storage company; right?

13 A. I don't think those went to an offsite storage.

14 Are you talking about the physical software that
15 Oracle shipped us?

16 Q. No, I'm talking about you maintained backups of your
17 local environments in a tape format; right?

18 A. Oh, yes, our own backups of our systems, yes. They
19 were stored onsite, and then, because there's so many of
20 them, they would be shipped to an offsite storage, a
21 special protection unit, yes.

22 Q. In a tape format?

23 A. I believe they were tape format.

24 Q. And then you would keep the functioning local
25 environments on your system separate from those tapes that

1 you sent other places?

2 A. Yes, on our own servers and our data center, yes.

3 Q. All right. And those -- the environments that you
4 were using at Rimini were used in order to support
5 customers; right?

6 A. That was their full design and purpose, yes.

7 Q. All right. And that included troubleshooting for
8 customers?

9 A. Yes.

10 Q. Okay. And specifically for Siebel customers, you
11 used Siebel environments for troubleshooting; correct?

12 A. That was their design, but I don't know actually how
13 they were used day to day, yes.

14 Q. All right. Well, let's talk about the design first,
15 and then we'll talk about the day to day.

16 Now, by, troubleshooting in layman's terms, that
17 means that you have an environment that's separate from the
18 operating system and so you can look at it and say why is
19 the operating system having troubles, I'll look at this
20 other copy of it and work with it and see if I can figure
21 out what the trouble is over there.

22 Is that a fair summary?

23 A. Well, a little bit different.

24 Essentially, yes, you're taking the software,
25 you're playing with it to see if you can figure out what's

1 going wrong, what the customer had called in and reported,
2 yes.

3 Q. Right. Exactly. You're playing with it.

4 And once you play with that software, that's not
5 software that you would use for a backup purpose in case
6 there's a hurricane or a disaster.

7 You need a pure backup, and once you've played
8 with that software, that's not good for that backup
9 purpose; right?

10 A. No, I wouldn't agree with that.

11 Q. And once you've played with it, you've altered it,
12 and it's no longer pristine; right?

13 A. No. You don't necessarily make any changes to the
14 software in order to do a diagnostic with it. You could
15 literally just be looking at it, operating it. It doesn't
16 necessarily change any of the data.

17 Q. It doesn't necessarily. Sometimes it does; right?

18 A. It could, depending on what process you run or what
19 you're looking at, yes.

20 Q. And once you've played with it, you don't always
21 know whether you have changed it, so you don't use that
22 type of software as a backup in case of emergencies; right?

23 A. Well, again, you have to look at the different types
24 of software. Siebel, very different than a PeopleSoft than
25 a JD Edward. They're very different products and

1 technologies here.

2 Q. Right. I'm talking about -- I'm probably talking
3 about any type of software.

4 But in terms of these types of software for your
5 emergency backup when you need a pristine copy that you
6 know has not been altered, you don't use software that
7 someone's been playing with; right?

8 A. No, I don't necessarily agree with that.

9 Q. All right. So let's look at Exhibit 310.

10 A. Yes, I'm there.

11 Q. Okay. All right. And this is talking about your
12 customer --

13 MR. ISAACSON: This is preadmitted, yes.

14 BY MR. ISAACSON:

15 Q. So this is your customer, XO Communications; right?

16 A. Yes.

17 Q. And Mr. Whittenbarger, on the first page, is talking
18 about,

19 "One of the initial tasks we perform with new
20 clients is setting up an environment dedicated to that
21 client prior to any issues being reported, so that we are
22 already prepared once a client calls on us to troubleshoot
23 a problem."

24 That's your plan for the Siebel environments;
25 right?

1 A. Yes, for this client, yes.

2 Q. Okay. And then -- so -- and what you were doing
3 here with these troubleshooting environments is you were
4 using one customer's environment to research or
5 troubleshoot problems for different customers; right?

6 A. Well, as I said before, we would use a generic
7 environment for a particular release of the product that
8 other multiple customers would have the same license, yes.

9 Q. All right. And just to be clear, you would use the
10 Siebel environment, if there's trouble, someone would play
11 with it, maybe altering the system, maybe not, trying to
12 figure out what the trouble is, and you would use that
13 environment to check out troubles for a customer that had
14 software of one customer, and you would be doing that for a
15 customer -- for a different customer.

16 I'm not sure that came out good?

17 A. Say that again, please.

18 Q. Sure. You had an environment for troubleshooting
19 that had a customer's software on it, call it Customer A,
20 and that would be used for troubleshooting, played around
21 with, to see what troubles Customer B was having; right?

22 A. If they were on the same release and the same
23 license, yes.

24 Q. Okay. And you also installed copies of the Siebel
25 environment to learn about it, to evaluate it, to see how

1 it worked, not just for clients; right?

2 A. Well, Dennis Chiu was head of all support for
3 Siebel, so we didn't need to learn about Siebel. We knew
4 Siebel. Yes.

5 Q. All right. You had engineers who used those
6 environments to evaluate the latest versions of Siebel
7 software, didn't you?

8 A. Well, again, as customers would come on, they would
9 learn the software, yes. Standard.

10 Q. All right. And -- but they were using it to learn
11 about the new software to help them with other customers,
12 weren't they?

13 A. Sure. They would use the environments that
14 customers, again, that were licensed for. But, yeah, they
15 learned about the software.

16 Q. And when you installed Siebel software environments
17 for those early customers such as Albridge and Brandes, you
18 told them in their contracts that they were going to have
19 development and test environments, didn't you?

20 A. I think it was a standard part of our agreements
21 from the first contracts we ever wrote, yes.

22 Q. Exactly. So a standard provision of the Siebel
23 contracts, your contracts with your customers, said that
24 you would be setting up general testing and development
25 environments to support them?

1 A. We said that we would be setting up environments,
2 yes, to support their software, yes.

3 Q. And you specifically told them you would be using it
4 for development and testing; right?

5 A. Yes. That is the way it's written into the
6 contract, yes.

7 Q. All right.

8 A. Development, testing, and troubleshooting -- I'm
9 sorry, if it's okay for me to explain.

10 Q. Actually, I'm going -- it's a good point, but let me
11 ask the questions.

12 We talked about troubleshooting. Now, we're
13 talking about development and testing.

14 Testing is where you actually test and update
15 for a fix before putting it onto the actual client's
16 system; right?

17 A. In general, yes.

18 Q. And when you test it on one environment, you
19 potentially alter that environment, it no longer becomes a
20 pristine copy; correct?

21 A. This is why it's unfortunately a little more
22 complicated, because Siebel -- we never delivered any code
23 updates because it's a different kind of product. So I
24 just want to make sure we're clear.

25 Q. But I think we agree on testing.

1 And you would test, in Siebel environments,
2 using software of customer A, whether it would work for
3 customer B who was running the same software; right?

4 A. If you are referring to PeopleSoft, yes. Siebel,
5 no.

6 Q. The development is when you actually developed
7 upgrades in the environment; right?

8 A. Well, a development environment is used actually
9 where you make changes to the code. And, again, Siebel, we
10 didn't actually create any code, it was a different kind of
11 product.

12 Q. So -- and -- so you develop -- I think I said
13 upgrades, I probably should have said updates. You develop
14 updates in that environment using code?

15 A. Yeah, or a fix if the customer -- but, again,
16 Siebel, different product.

17 Q. All right. So we've got troubleshooting, we've got
18 testing, and then we've got development.

19 And you told the Siebel customers in their
20 contracts, in the standard form, you were going to be doing
21 all of those in the Siebel environments; right?

22 A. Yes, I believe so.

23 Q. All right. Now, you heard Professor Davis talking
24 about how Rimini would clone one customer's environment to
25 another; right?

1 A. We would actually use a base copy of a license for
2 one customer to create environments or that generic
3 development environment for customers who had the same
4 similar license, yes.

5 Q. Right. You would copy the environment for customer
6 A and re-create it for customer B?

7 A. Yes.

8 Q. And that's cloning?

9 A. That's cloning, yes.

10 Q. So I won't spend much time on cloning, but let's
11 look at 58.

12 MR. ISAACSON: All right. I want to -- this has
13 been preadmitted.

14 BY MR. ISAACSON:

15 Q. So this is Mr. Slepko and Mr. Chiu in 2009 talking
16 about environmental builds, and down below they're talking
17 about some specific builds, and specifically here it talks
18 about how you -- that one of your clients in Oklahoma was a
19 clone of Abilene School District?

20 A. Yes, just as your expert testified to the way that
21 worked.

22 Q. Right. And that's actually on page 2.

23 And the reason we're bringing that up is
24 because -- and you saw me show a document in opening where
25 you told the Abilene School District that they were only --

1 you were only going to use their environment for them. Do
2 you remember seeing that?

3 A. Yes, I see that.

4 Q. Okay. So what happened was you told Abilene School
5 District you were only going to use their environment for
6 them, and you cloned their environment for another
7 customer; right?

8 A. Again, these are same licensed software.

9 You're talking about the way that the software
10 is licensed versus what you're calling customer software.
11 We don't agree with that.

12 Q. Sir, my question was, you told Abilene School
13 District that you were only going to use their software for
14 them, and then you cloned their software for another
15 client. That's what happened; right?

16 A. No.

17 Q. The -- can we look at the pilot -- Ravin 2. It's
18 going to be on the screen. I'm sorry, it's not a PTX.

19 A. Okay.

20 Q. It's a slide. Sorry.

21 All right. I want to look -- the exhibit you
22 can look at is PTX 4896.

23 COURTROOM ADMINISTRATOR: It's not admitted.

24 MR. ISAACSON: Because it's large -- I'm going
25 to hand it up. It was kind of large so we didn't want to

1 put it into the binder.

2 COURTROOM ADMINISTRATOR: But it's on the
3 screen. It's not admitted.

4 MR. ISAACSON: This is a demonstrative that's
5 not been objected to. This is not the actual exhibit.

6 THE WITNESS: I'm on 4896.

7 BY MR. ISAACSON:

8 Q. Okay. Now, you would advertise and market to
9 clients who your major first clients were; right?

10 A. Sure, as much as possible.

11 Q. You would use the term pilot clients. Do you
12 recognize that term?

13 A. Yes.

14 Q. Okay. And this is -- this is a group of pilot
15 clients that you promoted in -- to other clients; right?

16 A. They all look familiar, yes.

17 Q. Okay. The -- they had local environments, didn't
18 they, with copies of Oracle software?

19 A. I'm not sure which ones had environments or didn't.

20 Q. Well, we tracked it from what's been stipulated to,
21 all right? A lot of your pilot clients had those local
22 environments with copied Oracle software, didn't they?

23 A. Yes. It looks like not all of them on here.

24 Q. All right. And then there was the Oracle library.
25 You had the Oracle library operating during this time,

1 other than when you had Beekley and Caterpillar and
2 Brandes; right?

3 A. Yes, installation media, yes.

4 Q. Okay. And you had the DV -- some of these customers
5 got those DVDs from Oracle SupportWeb; right?

6 A. That looks right, if that's what you guys found.

7 Q. Okay. And you heard Professor Davis talk about
8 cross-uses of fixes. These clients were getting those
9 cross-use fixes, right, several of them?

10 A. If they were on the same release and entitled to
11 them, yes.

12 Q. Okay. And you were cloning for these clients,
13 right, for several of them?

14 A. Again, cloning was a part of our methodology,
15 certainly.

16 Q. Okay. What about your public clients? Let's look
17 at Ravin 3.

18 These were your first three public clients;
19 right? And by public I mean in the government sector.

20 A. I thought we had one in Washington that was our
21 first -- or in the first, but if you say these are, I'll go
22 with that.

23 Q. You called them the magical 3; right?

24 A. Yes. In the public sector, a lot of RFPs require
25 you have three references in order to go forward to

1 hopefully win a bid.

2 Q. So what that means -- an RFP is a request for
3 proposal; right?

4 A. Right.

5 Q. So a public sector client, they need to get multiple
6 bids or offers, so they put out a request for proposal, and
7 they typically require three references?

8 A. Yes, they look for three people who can say that the
9 service or the people or the partners are good, yes.

10 Q. And these first three references are very important
11 because then they give you the opportunity to bid. You
12 don't have the opportunity to go after these clients, at
13 least most of them, until you have those three references?

14 A. Yes, but they have to be good references.

15 Q. Okay. And just to go over with these three, your
16 magic 3, let's look at the local environments.

17 All right. All three had local environments
18 with copied Oracle software; right?

19 A. Again, I don't know for a fact, but if you say so.

20 Q. Okay. The -- they were all -- your library with
21 people -- with Oracle software was in existence when you
22 were getting these clients; right?

23 A. Again, I'll go with your -- if you say that's in the
24 stipulation.

25 Q. Right. And you actually told the City of Flint that

1 you were only going to use their Oracle software for them;
2 right?

3 A. Well, again, only use the software that they were
4 licensed for for them, yes.

5 Q. In fact, that was a standard message to clients;
6 correct?

7 A. Yes.

8 Q. And cross-uses of fixes, Professor Davis, all three
9 of them got that; right?

10 A. If that's what it says, yes.

11 Q. And then cloning.

12 Okay. All three had cloning, but all three were
13 told we're only going to use your software for you?

14 A. Yes. The software that they're licensed for, that's
15 correct.

16 Q. And then you cloned it for someone else?

17 A. Well, again, this -- we may be going through
18 semantics here, but from our perspective, it was Oracle
19 licensed software that they all had the same license to,
20 yes.

21 Q. So from your perspective, it was okay to clone even
22 when you were telling these clients across the board we're
23 only going to use your software for yourself, that it was
24 okay to use it for someone else?

25 A. There's no inconsistency there. They had the same

1 license. So we did not use anything particular to that
2 client for another client that wasn't licensed for the same
3 software.

4 Q. You didn't use it, you actually took the City of
5 Flint's software, copied it and cloned it for someone else;
6 right?

7 A. That's not the City of Flint's software, it's
8 Oracle's software.

9 Q. Okay. You took the City of Flint's licensed
10 software that you got from the City of Flint and cloned it
11 for someone else; right?

12 A. We cloned it. But, again, this was the same license
13 that every other client with the same license had.

14 Q. All right. Let me make sure we've nailed down this
15 point. You would tell this customer -- so City of Flint
16 would get its software from Oracle, either directly or
17 through you; right?

18 A. They would take delivery of it through a DVD,
19 download, et cetera, yes.

20 Q. And then you said we're only going to use this for
21 you; right?

22 A. We said that we're only going to use the software
23 you're licensed for for you. We will not give you license
24 to things that you are not entitled to.

25 Q. And then you took their software, and you put it in

1 testing, development, and troubleshooting environments;
2 right?

3 A. We put a copy of the same license, yes. It may not
4 have been direct media from that customer, but it was the
5 same license, yes.

6 Q. But -- and then you copied the -- you took an exact
7 clone or copy of the City of Flint's system that was only
8 going to be used for them, and you gave it to other
9 customers; right?

10 A. Well, we're coming back to the same point.

11 And, again, to explain, it's not the customer's
12 license.

13 Q. Did you do that? Did you physically do that?

14 A. We physically made copies of the same license of
15 software, but it's not the customer's software.

16 Q. Now, you told me which Siebel licenses that you
17 were -- that you looked to earlier today to say that you
18 thought it was okay to operate -- to rely on that license.
19 I'm going to ask you about JDE.

20 A. Yes.

21 Q. You believed your actions for JDE clients were
22 authorized by JDE customer licenses; is that right?

23 A. Yes.

24 Q. All right. And which JDE licenses would you point
25 to?

1 A. Whichever ones that I was aware of and we had seen
2 in the public market. We had pulled down some publicly
3 available licenses since they're available for public
4 companies and took a look at them.

5 Q. And is there any one that you can recall looking at?

6 A. Not at this time, no.

7 Q. Okay. And you said you reviewed, I think, or -- I'm
8 sorry, you didn't say, your lawyer said in opening
9 statement that you reviewed PeopleSoft licenses when you
10 worked at PeopleSoft?

11 A. Yes.

12 Q. And you left PeopleSoft when?

13 A. In 2001.

14 Q. And after that, that's when you went to TomorrowNow?

15 A. No, not for another year -- I'm sorry. Probably
16 over a year later, yes.

17 Q. So 2001, you're at PeopleSoft. A year or so later,
18 2002, 2003, you're at TomorrowNow?

19 A. I think it was May -- March to May of 2002.

20 Q. And 2005, fall of 2005, you started Rimini Street?

21 A. In September of 2005, correct.

22 Q. The licenses that you saw at PeopleSoft were from
23 2001 and before?

24 A. Yes, I was very familiar with those.

25 Q. Right. And you started at Rimini Street in

1 September 2005?

2 A. Yes.

3 Q. Okay. And when you said that you thought you were
4 acting properly under the PeopleSoft licenses, were you
5 relying on the licenses that you saw in 2001 and before, or
6 some other PeopleSoft license?

7 A. Well, certainly the ones in 2001 and before, and I'm
8 sure along the way customers had shared with us some of
9 their license agreements along the way.

10 Q. When you say "I'm sure," you said I'm sure about
11 various things and then it turned out you weren't so sure
12 or it wasn't true. Okay.

13 Can you tell me any customer that gave you a
14 PeopleSoft license, and then you said, "Oh, I'm going to
15 rely on this to conclude what I'm doing is okay"?

16 A. I know for a fact that I did review license
17 agreements, and I believe Brazoria County was one of them.

18 Q. Okay. You specifically remember the Brazoria County
19 license?

20 A. Yes.

21 Q. Okay. The -- and at that time that you were
22 concluding in your own head that it was okay to do what you
23 were doing based on the customer licenses, you did not know
24 what software was in the library of Rimini Street or how it
25 was being used; is that right?

1 A. That's correct, at a detailed level, yes.

2 Q. Okay. You added "at a detailed level." Did you at
3 a general level have an idea of what was in that library?

4 A. Yes; installation media.

5 Q. Okay. And we've already found out that there was
6 much more than installation media in there; right?

7 A. It seemed from the e-mails, but I don't know that
8 those things were actually ever downloaded or put in those
9 installation media.

10 Q. Okay. Even when -- and those are e-mails from the
11 beginning of your company -- so that the first year in the
12 company, how many people were working there?

13 A. I think two or three of us scrambling around all the
14 time, yes.

15 Q. All right. So during this period of time where you
16 said you didn't know what was going on about downloading,
17 there was only two or three of you at the company?

18 A. Yes, that's why I hired some engineers to do that
19 work so I could go out and sell and make the money and pay
20 the bills.

21 Q. Now, did you rely on your customers to determine on
22 their own what was in their licenses?

23 A. Yes. We had many large Fortune 500 companies that
24 all reviewed it and gave their legal approval to the
25 contracts, yes.

1 Q. Did you have a practice to obtain the license
2 agreements between the customers at Oracle when you brought
3 on new customers?

4 A. No. Customers were responsible to make sure as --
5 we're only service providers, so they had to make sure that
6 they were -- and they signed on the contract that they
7 didn't require anyone else's authorization.

8 Q. Did you rely on customers to tell you what the terms
9 of their contracts were?

10 A. Yes, several companies would come to us and, if they
11 had questions, we would try to respond and give them our
12 opinion. But otherwise they would make their own
13 decisions, yes.

14 Q. Did you ask customers if they had restrictions in
15 their contracts on where the software could be located,
16 whether it could be located at Rimini or on the customer
17 side?

18 A. Well, our contract specified that they would either
19 give us access remotely or give us the software to put in
20 the center, and they made that decision.

21 Q. That wasn't my question, sir.

22 Did you ask customers -- well, for the -- let's
23 talk about the customers who made -- you say the customer
24 made the decision as to whether you were going to op -- the
25 environment would operate on the Rimini system or on the

1 customer system; right?

2 A. Yes.

3 Q. Customers made that decision, not Rimini Street?

4 A. That's right. We would influence them because our
5 preference would be that it would be in our data center.
6 That would be our preference, yes.

7 Q. All right. We'll come back to that influence and
8 that preference.

9 The -- did you ask customers before they put it
10 on -- before you put it on your system if there were
11 restrictions on the -- in the licenses of having the
12 software on your system? Did you ask them that?

13 A. No, not specifically, no.

14 Q. All right. And, in fact, it was your position that
15 it's the customer's responsibility to know their own
16 license rights and capabilities, it wasn't yours?

17 A. Yes.

18 Q. Okay. This was -- if there was a violation of the
19 license agreements, it was your position with customers
20 that was their problem, not yours?

21 A. Well, again, they're the licensee who signed the
22 contract with Oracle, and they know their license.
23 Sometimes they would share it with us and ask us questions,
24 we would give them an opinion on it.

25 Q. I would like you to answer the question, sir. Okay?

1 It was your position that it was the -- it was
2 your position that it was -- if there was a violation of
3 the license agreement, that it was the customer's problem
4 and not yours; right?

5 A. No, of course it's our problem. But it was their
6 responsibility to make sure that their license was not
7 violated by the work we were doing.

8 Q. It was your position that it was the customer's
9 responsibility to know whether the license agreement was
10 being followed and not yours?

11 A. Yes, we relied on the customer to help us. If they
12 felt that there was a -- something we were asking in the
13 contract that was contrary to their license, we would
14 certainly expect them to address it.

15 Q. All right. So you were building a business based on
16 your belief that you were following the customer licenses,
17 but you were holding the customers responsible for whether
18 you were actually following the customer licenses; right?

19 A. We were responsible for managing our contract.
20 They're responsible to make sure that their license
21 agreement was not contrary to the services we were signing
22 for, yes.

23 Q. You did not have responsibility, in your mind, as to
24 whether that license agreement was being followed and
25 whether you were violating or whether you were committing

1 copyright infringement because you're putting that on the
2 customer; right?

3 A. The license agreement -- our contract actually says
4 in the contract that you agree that you don't have any
5 requirements from any third party in order to enter into
6 this contract with us.

7 Q. You did not have to know whether you were committing
8 copyright infringement. That was the customer's
9 responsibility; right?

10 A. No, I wouldn't put it so cavalier. I mean, we
11 absolutely weren't cavalier.

12 It's the customer's legal liability from our
13 perspective, but we certainly wanted to make sure that we
14 were following the license agreement and doing the right
15 thing.

16 Q. You said from your perspective it was the customer's
17 legal liability. It was their legal liability, in your
18 mind, and not yours, for copyright infringement; is that
19 right?

20 A. We're responsible for following through on the
21 execution of the contract we agreed. Customers signed the
22 contract with Oracle. We didn't have access to all that
23 information. They had to take responsibility.

24 Q. I don't know why it's so difficult to answer that
25 question yes or no. I would like a yes or no, sir.

1 From your perspective, it was the customer's
2 legal liability, it was their legal liability in your mind,
3 and not yours, for copyright infringement; is that right?

4 A. I think you're oversimplifying it.

5 Q. Can I have a yes or no answer?

6 A. I don't understand your question exactly.

7 Q. Well, let me repeat it for you, sir.

8 In your mind, when you were operating this
9 business, if there was legal liability for copyright
10 infringement, that was on the customer, not you?

11 A. No, that's not what I said.

12 We take responsibility for our actions. For
13 anything that we have violated the law on we're
14 responsible.

15 But the customer had to have responsibility in
16 making sure that when we entered into a contract that they
17 knew that their license agreement would allow the services
18 that they were signing up and paying for from us.

19 Q. And you actually told me, though, it was the
20 customer's legal liability from your perspective that was
21 at issue for copyright infringement; right?

22 A. To the extent of, again, of what Your Honor has
23 ruled relating to infringement on our side --

24 Q. I'm not talking about -- I'm not talking about the
25 Court's ruling, sir. I'm talking about what you were

1 thinking about.

2 And you've said on -- you've said on the record
3 it was -- it's the customer's legal liability from our
4 perspective.

5 A. Yes. When you enter into a contract with the
6 customer, the customer -- and you don't know what their
7 contract is with other parties, we do rely on making sure
8 that the customer's ready to enter into that contract.

9 Q. And you were putting that legal -- from your
10 perspective, that legal liability for copyright
11 infringement was on them and not on you?

12 A. For our actions, we are responsible. For anything
13 that they didn't tell us, if they were in violation of
14 their agreement, then, yes, we didn't know about that.

15 Q. But you were plunging ahead and copying Oracle
16 software unless they told you otherwise; right?

17 A. Yes. They signed a contract and said here's what we
18 want you to do for us, and that's what we did.

19 Q. So if they said nothing, if they just were silent
20 about this whole issue, you just plunged ahead and you
21 copied Oracle software for them?

22 A. Well, remember, they signed a very detailed
23 contract.

24 Q. Is that a yes or a no, sir?

25 A. We signed a contract with the customer that outlined

1 what it was we would do for the customer, how much they
2 would pay us. All these details were in the contract.

3 Q. Sir, I'm looking for some answers to my questions.

4 If the client was silent about the issue of
5 their licenses, you just plunged ahead and started copying
6 Oracle software; right?

7 A. Disagree with your characterization.

8 Q. Okay. Is that when the customer was silent about
9 the license or any license rights, you proceeded to copy
10 Oracle's software and provide them support; correct?

11 A. The contract laid out what services we would
12 provide.

13 If the customer agreed with them, and they would
14 have their lawyers review these documents, and when we
15 executed, our expectation was that, on their side of the
16 bargain, they had already reviewed it and made sure they
17 were in compliance with their license agreement.

18 MR. ISAACSON: I would ask that the witness be
19 directed to answer the question, Your Honor.

20 THE COURT: Answer the question, Mr. Ravin.

21 THE WITNESS: I'm sorry, could I have the
22 question again, please?

23 THE COURT: Madam recorder, would you repeat the
24 question.

25

1 (The question was read by the court
2 reporter.)

3 THE WITNESS: I just don't agree with -- the
4 question's lumped together. I don't know how to answer
5 that question.

6 BY MR. ISAACSON:

7 Q. Well, let's try and help you out.

8 You had some customers who you didn't discuss
9 their license rights with; right?

10 A. That's correct.

11 Q. So there were customers that were silent about what
12 their license contained and their license rights; correct?

13 A. That's correct.

14 Q. Okay. And for those customers, you proceeded to
15 copy Oracle's software and provide them support; correct?

16 A. I'm not sure whether in a particular customer we
17 copied software on their behalf or not. Some customers
18 came over with no archive requirements, no environment, so
19 I can't say that that's a hundred percent true.

20 Q. Okay. You can't say it's a hundred percent true,
21 but it's a lot true, isn't it? There were a lot of
22 customers who were silent about their license rights, and
23 you proceeded to copy Oracle software for them?

24 A. I would say that's a fair statement.

25 MR. ISAACSON: Okay. Your Honor, we have that

1 other issue that we wanted to take up with you. And this
2 might be a good time to do that.

3 THE COURT: All right. We do have an issue that
4 needs to be raised with the Court, ladies and gentlemen.

5 And I would tell you, and counsel have been good
6 about this, we -- from time to time we have issues arise,
7 and we try to deal with them when it doesn't delay you.

8 We're a little earlier for our next break, but
9 we'll go ahead and take a break at this time, you can treat
10 it as your third break, so to speak, and take a little more
11 time, because I have to hear from the lawyers and an
12 argument.

13 And then we will return in no more than half an
14 hour, but I'm thinking 20 minutes with some success.

15 So that being the case, I'll remind you of the
16 admonitions. We'll take a break at this time, and,
17 counsel, the Court will take a break for 5 to 10 minutes
18 and return.

19 COURTROOM ADMINISTRATOR: Please rise.

20 THE COURT: You may step down, ladies and
21 gentlemen.

22 (Recess from 11:15 a.m. until 11:32 a.m.)

23 (Outside the presence of the jury.)

24 COURTROOM ADMINISTRATOR: Court is again in
25 session.

1 THE COURT: Have a seat, please.

2 Do we have a preliminary matter?

3 MR. WEBB: We do. There's a dispute as to
4 whether Mr. Ravin can be in the courtroom during the
5 discussion about the admissibility of TomorrowNow evidence.

6 Mr. Isaacson requests that he not be here. We
7 believe, as a named defendant, he has a right to be in all
8 proceedings in this case.

9 THE COURT: As a named defendant, he does,
10 Mr. Isaacson.

11 If you have an argument that you think would
12 overcome that, I'll hear it and allow you to make it for
13 the record, but any party would have the right to be
14 present.

15 MR. ISAACSON: I won't take the Court's time
16 with it.

17 THE COURT: All right.

18 All right. So at this time, Mr. Isaacson -- do
19 we have Mr. Ravin present?

20 COURTROOM ADMINISTRATOR: Not yet.

21 THE COURT: All right. Mr. Ravin, you can just
22 be seated at counsel table.

23 Mr. Isaacson, go ahead.

24 MR. ISAACSON: Sure, Your Honor.

25 So at this point, there's a couple issues that

1 the TomorrowNow -- evidence related to TomorrowNow is going
2 to relate to, and I'll take a couple minutes to walk you
3 through that.

4 It's obviously become clear that the good faith
5 beliefs of Mr. Ravin have been put at issue in this case.

6 In opening statement, counsel's indicated
7 Mr. Ravin was careful, he was confident what he could do
8 was legitimate. He knew those contracts. He worked with
9 those contracts. He understood those contracts.

10 He also said in opening statement other
11 companies, other third parties, were operating this
12 business, and he understood so long as he kind of stayed
13 with what they were doing, he would be fine.

14 He said that PeopleSoft, back when Mr. Ravin was
15 there, never once objected to a third party providing
16 maintenance.

17 He said it wasn't intentional. Mr. Ravin
18 honestly believed that line was there.

19 He said that being wrong does not make you a
20 liar, referring to the Court's findings of infringement in
21 this case, and that Mr. Ravin could not have possibly
22 understood where the lines were.

23 Now, obviously in testimony, I lost count as to
24 how many times Mr. Ravin has talked about his good faith
25 beliefs, and there's already been some examination of that.

1 So with respect to that, there are specific
2 documents that would test that proposition. One of them is
3 PTX 30, and I've got one extra copy here, but if you --

4 THE COURT: If it's convenient to bring it up on
5 the screen and highlight the portions you're concerned
6 about, that may speed it up for all of us.

7 MR. ISAACSON: Let me walk you through this. At
8 the top, this is Mr. Ravin talking to a customer, I believe
9 he's with the Pittsburgh public schools, and he says --
10 Seth Ravin says at the top, "The concerns for TomorrowNow
11 customers go beyond the lawsuit," referring to the Oracle
12 lawsuit.

13 And then he moves down to a paragraph that says,
14 "What is happening is that SAP, TomorrowNow's parent
15 company, has decreed that TomorrowNow shall no longer be
16 allowed to be in possession of, or touch, Oracle owned
17 software. This has huge service implications for
18 TomorrowNow."

19 Now, what he is saying here to a customer is
20 Oracle sued TomorrowNow, his former company, that
21 TomorrowNow in response has decreed that it's no longer
22 going to touch Oracle software.

23 And that specifically means, in the next
24 paragraph, "So TomorrowNow has sent notice to every client
25 telling them that TomorrowNow will no longer host copies of

1 the client's test environments used by TomorrowNow to
2 diagnose issues and build tax updates."

3 So that the former CEO of TomorrowNow, in
4 September 2007, has knowledge that due to the Oracle
5 lawsuit against TomorrowNow, that TomorrowNow has made the
6 decision, a decision that Mr. Ravin did not make, to end
7 the local environments, and, in fact, he is now using
8 TomorrowNow's decision to not use Oracle software as a
9 competitive advantage. He is using that to say "we can
10 provide you those environments and those people over in
11 TomorrowNow will not."

12 So I would then -- so that's one document I
13 would like to go over with Mr. Ravin.

14 MR. WEBB: Can I respond to that, one at a time?

15 THE COURT: Yeah. We can. The number on that
16 again was what?

17 MR. ISAACSON: Thirty.

18 THE COURT: Three --

19 MR. ISAACSON: Thirty, three zero.

20 THE COURT: And the portions in question?

21 MR. ISAACSON: Are on the first page.

22 THE COURT: All right.

23 MR. ISAACSON: And, Your Honor, I should point
24 out, because my colleagues have pointed this out, he goes
25 on to say,

1 "Rimini Street has no such conflicts and no such
2 ridiculous policies. We will be taking over TomorrowNow's
3 clients and hosting testing environments so those clients
4 can avoid the chaos, cost and soured relationship with
5 TomorrowNow.

6 THE COURT: All right.

7 Mr. Webb?

8 MR. WEBB: To be honest, Judge, that part in the
9 abstract doesn't bother us, because that's not what we're
10 concerned with.

11 We're concerned with the litigation with SAP and
12 the concession of liability, the verdict, the criminal
13 plea, all happening years after Mr. Ravin left the company.
14 That's the concern.

15 If that stuff comes into evidence, we are
16 hopelessly prejudiced. That's not going to be a bell that
17 we can possibly unring.

18 So they can talk about how TomorrowNow is on the
19 market. I just said that at a sidebar. We have no problem
20 with that.

21 They can talk about TomorrowNow as a competitive
22 option. Fine. We're not going to say they're not
23 infringing option, we never have.

24 But when they invoke this lawsuit and actions
25 taken by SAP in response to that lawsuit, we will be

1 hopelessly prejudiced. It will be game over.

2 We know this to be true because the jury's going
3 to conclude that there was a finding of liability when
4 there was not.

5 SAP decided to pull the plug on TomorrowNow for
6 reasons that none of us know. We do know they're a vendor
7 who was challenged by third-party maintenance as well.
8 That is just as likely as a finding or concern of
9 infringement. We don't know.

10 That type of supposition has no place in the
11 courtroom, especially when the impact to this case and the
12 fairness of this proceeding to Rimini Street and Mr. Ravin
13 will be devastating.

14 So if he wants to talk about that, divorced from
15 the lawsuit, that's fine. The lawsuit, the finding of
16 liability, or the admission of liability, the verdict,
17 anything in the litigation or the criminal plea, that's
18 where we draw the line.

19 MR. ISAACSON: All right. So let's take it in
20 stages. At this stage we're just talking about the
21 lawsuit. I'll talk about the other things separately.

22 But PTX 30 clearly puts into play that
23 TomorrowNow, with Mr. Ravin's knowledge, in response to the
24 lawsuit, stopped doing exactly what we're accusing them of,
25 violating the copyright laws, doing.

1 And he and his counsel have put into issue his
2 good faith belief. We didn't make that decision.

3 We will be prejudiced if he gets to say on the
4 stand "I honestly believed this," when we can point to his
5 former company who, after we sued them, took the exact
6 different action that he did, and he did it to gain a
7 competitive advantage against that former company.

8 This is direct -- this makes the lawsuit
9 directly relevant. It will also be separately relevant
10 when we point out statements, and Your Honor looked at this
11 in a motion in limine that after the lawsuit was filed that
12 they made statements saying we're different from
13 TomorrowNow, we're not doing what they were doing.

14 All right. And we should be able to put that in
15 this, as well, that that was the other thing they were
16 doing after the lawsuit, both to make misrepresentations to
17 customers and to gain a competitive advantage in the
18 marketplace.

19 MR. WEBB: Listen, if they don't want to allege
20 willfulness, we won't inject Mr. Ravin's good faith. It's
21 not our issue. They raised willfulness. We have an
22 obligation, a right to bring into play his state of mind in
23 good faith.

24 They can't allege willfulness and then use that
25 as a hook to get in this highly prejudicial information.

1 First of all, Judge, there's no evidence that
2 the TomorrowNow process and the process in this case are
3 the same or even similar.

4 We do know that Mr. Ravin left two years before
5 that lawsuit was even filed, and we know nothing as to why
6 SAP pulled the plug on anything. As to why it's relevant
7 to this case, I have no idea.

8 TomorrowNow was in the marketplace. Rimini
9 Street did position itself against TomorrowNow as a
10 competitor distinguishing what they did over what
11 TomorrowNow did.

12 They're trying to combine the two of them just
13 so they can get in this type of evidence which, again, if
14 that comes in, this trial might as well be done, it's over,
15 because we know the impact the jury will have.

16 They're going to say, oh, wow, another judge has
17 already found this to be infringing, and Seth Ravin did
18 both systems.

19 There's a line to be drawn here, Judge. I think
20 we're trying to be fair. I think they're taking it way,
21 way, way too far. If that happens, it is what it is.

22 MR. ISAACSON: We're mushing together several
23 things right now. I'm going to go to the next steps in the
24 line.

25 But at this point I'm talking about the fact

1 that we filed a lawsuit against TomorrowNow, and
2 TomorrowNow took certain actions, and Mr. Ravin discussed
3 that lawsuit with customers. So that's step 1.

4 Step 2 will be the liability issue, and I'll
5 talk about that separately.

6 MR. WEBB: Step one, he has already then
7 polluted the jury, because he said you were the founder,
8 you were the president, blah, blah, blah, you were in
9 control of this.

10 And now all of a sudden the jury is going to
11 hear that SAP was sued and then basically TomorrowNow was
12 shut down. I think -- your Honor, I think the inference is
13 more than clear as to where that would be going.

14 MR. ISAACSON: This goes directly to his state
15 of mind.

16 It is absolutely absurd for this man to be on
17 the stand saying "I didn't know any" -- "I didn't know I
18 was doing anything wrong with these environments," when he
19 knows that after his former -- and he's paying attention to
20 his former company.

21 He was the president. He's looking at it. They
22 get sued. He looks at it. And he says, "Look what they
23 did, they stopped -- they stopped these environments, and
24 we're going to continue on, and we're going to take
25 advantage of this."

1 And that goes directly to the state of mind
2 that's been put in issue.

3 And, no, we are not withdrawing our willfulness
4 contentions. We are allowed to do that as well as ask
5 for punitive damages.

6 MR. WEBB: So the --

7 THE COURT: Give me some chronology here. When
8 were the environments stopped by TomorrowNow?

9 MR. WEBB: 2008, I believe, Judge.

10 MR. ISAACSON: According to Exhibit 30, 2007.

11 MR. WEBB: They were sued in 2007, I believe;
12 right?

13 MR. ISAACSON: Exhibit 30 is dated November
14 16th, 2007, and Mr. Ravin is announcing that TomorrowNow
15 has sent notice to every client telling them TomorrowNow
16 would no longer host copies of the client's test
17 environments.

18 MR. WEBB: All right. So let's take that a
19 piece at a time, Judge.

20 THE COURT: Okay. Give me when the TomorrowNow
21 suit was brought.

22 MR. WEBB: All right. Just a timeline, Judge.

23 Mr. Ravin left PeopleSoft in 2001. Starting --
24 he joined the company, TomorrowNow, was cofounder with
25 respect to this business in 2002.

1 He left the -- actually SAP acquired TomorrowNow
2 in 2005. Mr. Ravin left two months later, in 2005.

3 The lawsuit filed by SAP happened two years
4 after Mr. Ravin left SAP, in early 2007.

5 So there's a gap of about two years between the
6 time Mr. Ravin left TomorrowNow and the time the lawsuit
7 was filed by Oracle against SAP.

8 And there's no foundation that the process used
9 by TomorrowNow is the same as the process used by Rimini
10 Street.

11 And, again, I'll reiterate, if Mr. Isaacson
12 wants to talk about a decision by SAP to drop local
13 hosting, and Mr. Ravin's saying we're going to use that to
14 our advantage, that is fine, we have no objection to that.

15 But if he wants to take it to the next step and
16 say they decided to pull the plug on the local hosting
17 because of a lawsuit and an admission of infringement,
18 that's where -- that's where we draw the line.

19 MR. ISAACSON: This is not the admission of
20 infringement yet. I will get to that next. But -- I will
21 defend the admission of infringement as a point of
22 examination, but we're not there yet.

23 This is -- there was a lawsuit, they reacted to
24 it, they said things to customers, and they knew -- it's
25 important that it's his former company because that means

1 he's going to pay attention. That goes to his state of
2 mind. And they made the opposite decision that he did.

3 THE COURT: All right.

4 MR. WEBB: The problem is, Judge, we don't know
5 why they made the decision, and we don't know if the
6 systems were the same.

7 The fact that he was involved in one company and
8 then was a founder and began a brand-new company, that does
9 not mean that the decision made by SAP for whatever reason
10 to stop providing these services means that there's
11 something implicating his services for his new company.
12 That's our problem with that.

13 MR. ISAACSON: When you put into issue good
14 faith belief, red flags -- and this is one big red flapping
15 flag -- is -- causes you to say, gee, I have this belief, I
16 should be looking into this, and I'm entitled to examine
17 him about this when he knows about it --

18 THE COURT: All right. I think I've heard
19 enough.

20 I feel that you're entitled to examine into his
21 awareness of the challenge to the process that was common
22 between TomorrowNow and when he was there, and what was
23 being done in connection with this particular litigation.

24 But I am of the view that taking it further and
25 to identify the result of the lawsuit, the criminal issue

1 and actions taken in subsequent years by SAP related to
2 that TomorrowNow history, one, is obviously highly
3 prejudicial, and, secondly, it's confusing and opens up
4 issues in this case that Rule 403 are expressly designed to
5 avoid.

6 So I will allow you to cross-examine him about
7 his awareness to the challenge that may have existed up and
8 to --- during the period of time in question, but I'm not
9 going to allow evidence of the result of the lawsuit,
10 actions taken by SAP when he was no longer with SAP -- or,
11 excuse me, with TomorrowNow, and the findings resulting
12 from any of that litigation.

13 MR. ISAACSON: Okay. So what's -- so to help me
14 follow what the Court wants me to do, Plaintiffs'
15 Exhibit 30, am I permitted to examine him based on this?

16 THE COURT: I would -- let me look at it again.

17 All right. I'm of the view that you can
18 cross-examine him with regard to Exhibit 30.

19 MR. WEBB: Just for clarity, Your Honor, does
20 that mean Mr. Isaacson gets to mention the lawsuit between
21 Oracle and SAP regarding TomorrowNow's business activities?

22 THE COURT: Well, the lawsuit is obviously the
23 subject of the memo and was obviously something that
24 Mr. Ravin was aware of at that time, the challenge that was
25 involved in that lawsuit.

1 I will allow cross-examination into his
2 awareness of the challenge to the practices that are in
3 common with this case, but that's as far as it goes.

4 MR. WEBB: And nothing about the admission by
5 SAP or TomorrowNow of infringement?

6 THE COURT: That's right.

7 MR. WEBB: Okay. And may I have just a
8 continuing objection to this, Your Honor?

9 THE COURT: Yes.

10 MR. WEBB: Okay. Thank you, Your Honor.

11 MR. ISAACSON: Your Honor, I would like, before
12 you finish your ruling on this, there's three levels of
13 admission -- or three levels of liability, there's the
14 criminal findings, there's the jury verdict, and then
15 there's the stipulation of liability.

16 And the stipulation of liability, I would
17 actually ask you to look at because I believe it's in 2010,
18 which is still in the period where we're claiming lost
19 customers and which he's claiming a good faith belief --

20 THE COURT: But he's not a party to that
21 stipulation.

22 MR. ISAACSON: No, but what I want to point you
23 to is that, again, in terms of him being on notice, is
24 overlapping conduct, because that stipulation talks about
25 TomorrowNow having those environments --

1 THE COURT: I'm not going to allow the admission
2 of a third party to be used against Mr. Ravin in this case
3 because it's going to open up just too many issues. It
4 tends to be too prejudicial, and I'm not going to do that.

5 MR. ISAACSON: And just so I'm clear, I'm not
6 seeking admission of this, all right, but --

7 THE COURT: I understand.

8 MR. ISAACSON: -- as clearance for
9 cross-examination. Okay.

10 THE COURT: I don't want you to include in your
11 cross-examination any suggestion of what the results were
12 in the litigation.

13 MR. WEBB: Thank you, Your Honor.

14 MR. ISAACSON: All right. And just as one last
15 final point, we will -- we think that there could be other
16 stages at this trial where this issue may come up again as
17 doors --

18 THE COURT: I would tell you that this is a
19 preliminary ruling, and I would consider other stages and
20 other complexions in which it might arise.

21 But I think I've given you a pretty good
22 indication of where I'm headed on this, and so if you sense
23 that that sensitive issue is about to come up again, give
24 me a heads-up so we don't get involved with it in front of
25 the jury, and we will deal with it at that time.

1 MR. ISAACSON: Yeah, we will do that.

2 COURTROOM ADMINISTRATOR: All right. So PTX 30
3 will be admitted at this time?

4 THE COURT: PTX 30 will be admitted subject to
5 the continuing objection imposed by the defense.

6 MR. WEBB: Thank you, Your Honor.

7 (Plaintiffs' Exhibit 30 received into
8 evidence.)

9 THE COURT: All right. Let's bring the jury in
10 this, please.

11 COURTROOM ADMINISTRATOR: Yes, Your Honor.

12 (Jurors enter courtroom at 11:55 a.m.)

13 THE COURT: All right. Have a seat, please.

14 The record will show that we are in open court.
15 The jury is all present. The parties and counsel are
16 present.

17 And we may continue after the break with the
18 continued cross-examination by Mr. Isaacson.

19 MR. ISAACSON: Thank you, your Honor.

20 BY MR. ISAACSON:

21 Q. One point I wanted to clean up, I said I would come
22 back to PTX 744. If you could look at that, Mr. Ravin. It
23 should be in your second binder.

24 This is May 1st --

25 A. I'm sorry, if you could wait just one second,

1 please.

2 Q. 744?

3 A. I don't think I have a 744 unless I'm missing it
4 here. I have 726 to --

5 MR. ISAACSON: I'm sorry. This is my fault. It
6 wasn't there. So I've got to hand it up. Sorry.

7 THE WITNESS: Thank you.

8 COURTROOM ADMINISTRATOR: You're welcome.

9 THE WITNESS: Should I just add this to the
10 binder?

11 COURTROOM ADMINISTRATOR: I'll do that.

12 MR. ISAACSON: No, don't.

13 BY MR. ISAACSON:

14 Q. 744, this is back in May of 2006 when you're working
15 with Dennis Chiu, he's writing to you, the company's small,
16 it's you, Mr. Chiu, maybe Susan Tahtaras and Ola Bola.

17 On page 2, Mr. Chiu writes to you, can we --
18 this has been preadmitted, I believe.

19 COURTROOM ADMINISTRATOR: Yes, it's admitted.

20 MR. ISAACSON: Move to page 2 and put it on the
21 screen.

22 BY MR. ISAACSON:

23 Q. And this is Mr. Chiu writing to you, and the last --
24 in the last -- towards the bottom it says -- the paragraph
25 begins,

1 "As a backup strategy, I've asked Bola to
2 install the vanilla Siebel 7.04 and Siebel 6.01 software on
3 her laptop to better support Beekley and Galileo. Granted
4 it's not working under the lab model, but we can then be in
5 a better position to perform all the same work."

6 So what's happening here is one of your labs
7 wasn't working, so you were having Ms. Bola install the
8 software actually on her own laptops at this point; right?

9 A. That's what it looks like.

10 Q. Okay. And you indicated Mr. Leake is now working
11 part-time, and on your website, one of my colleagues
12 pointed out to me, that Mr. Leake "oversees all global
13 digital marketing, marketing communications, client
14 marketing, digital and rich media content creation, social
15 media and media analysis relations for Rimini Street. He
16 leads all aspects of ideation and execution for marketing
17 communications and digital media worldwide."

18 Is that accurate?

19 A. Not any more. That actually changed several months
20 ago when he moved to part-time status and took a different
21 role.

22 Q. But that was true up until a few months ago?

23 A. Yes, he was head of digital marketing, yes.

24 Q. Now, we talked a little bit about how you were the
25 former president of TomorrowNow?

1 A. Yes.

2 Q. And were you the 50 percent owner of TomorrowNow?

3 A. Yes, I owned 50 percent of the shares.

4 Q. And after you bought 50 percent of the TomorrowNow,
5 you changed their business to provide third-party support?
6 And by third-party support I mean support for enterprise
7 software.

8 A. Yes. Independent maintenance, yes.

9 Q. All right. And you're the one who made the decision
10 to change TomorrowNow's business model to compete with
11 PeopleSoft for support; right?

12 A. Well, in conjunction with my business partners as we
13 were 50-50 partners.

14 Q. Okay. But the business model was your idea?

15 A. Yes, based on my work at PeopleSoft and my
16 understanding of what the industry opportunity was.

17 Q. And you said publicly that you had designed the
18 TomorrowNow service; right?

19 A. Yes.

20 Q. And your responsibilities included designing
21 TomorrowNow services offerings; right?

22 A. Yes. The actual services that we would provide
23 customers, not the back end, how it gets delivered, yes.

24 Q. Well, but -- and you said what you would do is you
25 would negotiate and sell TomorrowNow service, support

1 services, to customers?

2 A. Yes, I would sell the support contracts.

3 Q. All right. And Doug Baron, who is the Rimini
4 employee we talked about is in charge of automated
5 downloading, he was at TomorrowNow; right?

6 A. That's my understanding, yes.

7 Q. You've got at least 10 employees, former employees
8 of TomorrowNow at Rimini Street; is that right?

9 A. I think it's more like 20 plus.

10 Q. And you have publicly said that Rimini's support
11 model didn't change much from the model that you built at
12 TomorrowNow; right?

13 A. Relating to what the core services were. We added
14 many new services that weren't available at TomorrowNow.

15 Q. Okay. And, in fact, you have said publicly the --
16 these are two companies you founded. You've said publicly
17 their histories have run together and there's no way to
18 separate those two companies.

19 A. Well, I use the example, I think, of Mr. Wynn who
20 designed the Bellagio and then designed The Wynn, you see
21 the same design elements, yes.

22 Q. Exactly. You've said that publicly before, and
23 you've said that now.

24 TomorrowNow and Rimini Street, as you said, were
25 like the Bellagio or the Wynn, they have their differences,

1 but when you walk in, it might have the same feel.

2 A. No, the new one is better always than the one
3 before, yes. We added a whole bunch of new features, yes.

4 Q. All right. Yours was the more modern version.

5 The -- and the -- counsel called you, I think, a
6 pioneer, in opening statement, and when your company has
7 marketed you as a pioneer, you would include as part of
8 that story your PeopleSoft, your TomorrowNow, and then your
9 Rimini Street experience?

10 A. The pioneer, I believe, in the sense that we were
11 creating this new idea of package services for these
12 products, yes.

13 Q. Right. But when you -- when your marketing people
14 call you a pioneer, or at least they used to, they were
15 including TomorrowNow as part of that?

16 A. Certainly.

17 Q. Okay. Now, let me ask you to look at Plaintiffs'
18 Exhibit 30. You are familiar with this exhibit, aren't
19 you, sir?

20 A. Yes, it looks familiar.

21 Q. Okay. Permission to put this on the screen. It's
22 on the screen. It's been admitted.

23 At the top, you're writing in November 2007 to
24 Pittsburgh public schools; right?

25 A. Yes. They became the client, yes.

1 Q. Now, at this point you're telling the Court and the
2 jury that you had a good faith belief that it was okay to
3 have these environments on the Rimini system with lots of
4 Oracle copies?

5 A. Yes.

6 Q. And what you learned in November 2007, or by
7 November 2007, you learned that Oracle filed a lawsuit
8 against TomorrowNow accusing them of copyright
9 infringement?

10 A. Yes, years after I left.

11 Q. Years after you left.

12 And -- but as the former founder of
13 TomorrowNow -- I'm sorry. At this point Rimini Street is
14 competing against TomorrowNow; right?

15 A. Yes, fiercely. We sold them, yes.

16 Q. You're paying close attention to TomorrowNow, it's
17 your former company, you're competing against them, and so
18 it's big news to you when Oracle files a lawsuit saying
19 TomorrowNow committed copyright infringement?

20 A. Yes.

21 Q. And so you pay attention to what you read about that
22 lawsuit?

23 A. In the media, yes.

24 Q. And you talked to customers about it?

25 A. Yes, we had discussions with customers who we were

1 competing with against my former company to try to win the
2 business, yes.

3 Q. Right. And this is an -- in this case you're
4 talking to the Pittsburgh public schools, and you're
5 talking about how, in the second sentence, "The concerns
6 for TomorrowNow customers go beyond the lawsuit."

7 The -- and moving down now, you say what is
8 happening. "What is happening is that SAP" -- that's
9 TomorrowNow's parent company; right?

10 A. Right. We had sold TomorrowNow to SAP, Oracle's
11 primary competitor in applications, yes.

12 Q. And they decreed "that TomorrowNow shall no longer
13 be allowed to be in possession of or touch Oracle-owned
14 software."

15 And going down to the next paragraph,

16 "So, TomorrowNow has sent notice to every client
17 telling them that TomorrowNow will no longer host copies of
18 the client's test environments used by TomorrowNow to
19 diagnose issues and build tax updates."

20 So what you knew now was that after Oracle said
21 to TomorrowNow in court that we think you committed
22 copyright infringement by having these environments, you
23 now know that TomorrowNow has made a decision that they're
24 not going to have those environments any more and they're
25 not going to possess or touch the Oracle-owned software;

1 right?

2 A. Yes. And that's why the next line said it's
3 ridiculous.

4 Q. We'll get to that. Okay.

5 But at this point you know that your former
6 company has said "we're no longer going to be doing these
7 environments, or touching the Oracle software," but you
8 decide to keep doing it; right?

9 A. Yes. That was SAP's decision.

10 Q. And you didn't consider this a big red flag that
11 maybe you shouldn't be going down this road, that you've
12 got problems with the customer licenses.

13 A. Not at all.

14 Q. And at this point, and this is the same period of
15 time where you're relying on customers to tell you if
16 there's any license issues; right?

17 A. Yes, hundreds of customers, yes.

18 Q. So TomorrowNow is making its own decision to do
19 this, but you're relying on your customers and saying we're
20 not going down that road?

21 A. Well, my understanding was it was SAP, the parent
22 company, made that decision. It was a primary competitor
23 to Oracle, yes.

24 Q. Fair enough, the parent company, the big boss makes
25 that decision.

1 But they make the decision to stop doing the
2 local environments after Oracle says you're infringing our
3 copyrights. But you say "I'm going to keep going forward
4 and I'm going to keep relying on my clients to tell me if I
5 have a problem."

6 A. Yeah, and my knowledge of the industry. I felt it
7 was perfectly fine.

8 Q. Okay. And the -- now, the point where you say it's
9 ridiculous, the next -- now, let's stick with this
10 paragraph.

11 You say,

12 "Instead, every client will now be responsible
13 for setting up their own environments for use by
14 TomorrowNow, and have to procure all hardware and software
15 at their own expense. These clients never agreed to such
16 costs."

17 Now, what you're saying is "we now have a
18 competitive advantage against TomorrowNow. They've gotten
19 rid of these environments, and we aren't. We are better
20 for you, the customer," in this case the Pittsburgh public
21 schools, "because we're willing to keep doing these
22 environments."

23 A. Yes, we believed it was perfectly fine.

24 Q. All right. And so you actually now are saying,
25 "gee, we're going to get more business because of this.

1 TomorrowNow, our competitor, has said we're not going to
2 have these environments with Oracle copies on it, we'll
3 keep having them, and we'll get more clients."

4 A. Yes, I think we brought over 80 customers from
5 TomorrowNow.

6 Q. All right. And -- well, that was later; right?

7 You -- but let's look at Rimini -- the next
8 paragraph that you pointed to.

9 "Rimini Street has no such conflicts and no such
10 ridiculous policies."

11 You are saying that what TomorrowNow is doing in
12 no longer having remote environments with Oracle software
13 on them is ridiculous, and you're going to be "taking over
14 TomorrowNow's clients and hosted testing environments so
15 these clients can avoid the chaos, cost, and soured
16 relationships with TomorrowNow."

17 Right?

18 A. Yes, yes.

19 Q. All right. Let me ask you to look at --

20 All right. Now, you told customers after this
21 lawsuit was filed that you were not -- you didn't have the
22 same issues as TomorrowNow with respect to copyright
23 infringement; right?

24 A. I'm sure I did.

25 Q. Okay. Let's look at 49 --

1 THE COURT: Mr. Isaacson, let me interrupt you
2 for a second. I see what appears possibly as a recording
3 device in the courtroom that's operating; is that correct?
4 Why is that on, can you tell me?

5 UNIDENTIFIED SPEAKER: It's wi-fi, Your Honor.

6 THE COURT: All right. I would caution everyone
7 in the courtroom that external recording devices are
8 absolutely prohibited in the courtroom.

9 All right. I'm sorry. Go ahead, Mr. Isaacson.

10 MR. ISAACSON: Completely understandable, your
11 Honor. You have a better view than I do.

12 4937, which would be in your second binder.

13 COURTROOM ADMINISTRATOR: What number did you
14 say, Counsel?

15 MR. ISAACSON: 4937.

16 COURTROOM ADMINISTRATOR: 4937. Thank you.

17 MR. ISAACSON: 4937 has not been admitted. I
18 would move to admit it.

19 THE WITNESS: Okay. 4937.

20 MR. WEBB: For the reasons we already stated,
21 Your Honor, we object to this exhibit.

22 THE COURT: I need to see a copy of the exhibit.
23 I don't have it.

24 MR. ISAACSON: Maybe I could offer some -- quick
25 sidebar?

1 THE COURT: Quick sidebar. Let me look at it
2 first. Do you have an extra copy?

3 MR. ISAACSON: Yes.

4 THE COURT: I'll speak with you at sidebar, but
5 I'm going to review this.

6 (Sidebar conference held as follows:)

7 THE COURT: All right. Counsel, go ahead,
8 please.

9 MR. ISAACSON: So to disclose to what I'm doing,
10 this will be the first of a series of documents where
11 Rimini or Mr. Ravin are talking to customers about why they
12 are different from TomorrowNow following the lawsuit.

13 The documents will not refer to the stipulation
14 of liability, the criminal thing, or the jury verdict. And
15 so I feel this is the same thing as PTX 30, and we would
16 have a continuing objection to that.

17 THE COURT: Go ahead.

18 MR. WEBB: I mean, I think, Your Honor -- this
19 is where I stand on this. I think this is just a slippery
20 slope. It's going to be really hard to keep the jury from
21 taking that next step to thinking that there was some
22 finding of liability. So that's why I object.

23 THE COURT: All right.

24 MR. ISAACSON: And we view these as
25 misrepresentations based on the record that's been made to

1 this point.

2 THE COURT: Okay. Say that again. I'm not sure
3 that my reporter would have gotten that.

4 MR. ISAACSON: Sure. We view these as
5 misrepresentations made to clients based on the record
6 that's been at this point.

7 For example, I will review for him how they say
8 unlike TomorrowNow, they're using a very controlled, proven
9 process that assures the types of unacceptable issues that
10 happened at TomorrowNow can't happen at Rimini Street, and
11 there's a series of documents that make similar assurances.

12 Again, I understand the Court's ruling.

13 THE COURT: All right.

14 MR. ISAACSON: No mention of --

15 THE COURT: Okay. I'm going to overrule the
16 objection. We obviously reach a point where references to
17 the litigation will have to cease.

18 But this is relevant to the state of mind of
19 Mr. Ravin, and I'm going to admit it on that particular
20 ground.

21 MR. WEBB: Understood, your Honor.

22 THE COURT: And your objection is preserved.

23 MR. WEBB: Thank you.

24 (Sidebar conference concluded.)

25 THE COURT: Go ahead, please.

1 BY MR. ISAACSON:

2 Q. Do you have 4937, Mr. Ravin?

3 A. Yes, I do.

4 Q. Thank you. This is an email exchange between
5 Mr. Davichick, who is the -- is he the head of marketing
6 and sales for you?

7 A. I think at that time he may be the only sales.

8 Q. All right. So this is August of 2007, and he's
9 e-mailing with -- this is the Santa Fe --

10 A. Santa Fe Natural Tobacco, now part of Reynolds
11 Tobacco.

12 Q. Santa Fe Tobacco Company.

13 And they are again -- and he's talking to the
14 customer about the fact that Oracle's filed a lawsuit
15 against TomorrowNow.

16 And at the bottom of the first page he's talking
17 about -- he's criticizing TomorrowNow, and continuing on
18 the second page he says,

19 "Rimini Street downloads the software from
20 Customer Connection that Oracle does not make available
21 through physical or package delivery."

22 Customer connection was that website that we
23 were talking about where you were building up the
24 PeopleSoft library; right?

25 A. Yes, I think that was before they changed the name

1 to Metalink. They kept changing the name.

2 Q. "Rimini Street does the down-" -- what you told this
3 customer was, "Rimini Street does the downloading at its
4 own site using a very controlled, proven process that
5 assures the type of unacceptable issues that happened at
6 TomorrowNow can't happen at Rimini Street."

7 Right?

8 A. Yes.

9 Q. And you told them that you had a very controlled,
10 proven process, you were saying you knew what you were
11 downloading and for who; right?

12 A. Yes, because we actually went through, used the
13 tool, we had very specific process, yes.

14 Q. But you didn't know what was in the library, did
15 you?

16 A. Well, I didn't say that I personally, this was not
17 written by me.

18 Q. You didn't have any audit or any -- you didn't have
19 any audit of what was in the library, did you?

20 A. Not that I'm aware of.

21 Q. All right. When you were talking about a
22 controlled, proven process, you were talking about what you
23 were taking from the client, you aren't talking about what
24 you put in the library?

25 A. I think this email specifically refers to the

1 download that we would do for the customers.

2 Q. Exactly. So it was very common for -- after the
3 TomorrowNow lawsuit for you to tell customers "we're
4 different from TomorrowNow because we have a controlled
5 process that we audit," and that related to the download
6 for the customer, what you were taking for the customer;
7 right?

8 A. Yes, what the customer had authorized us to download
9 on their behalf.

10 Q. It didn't refer to what you put in the library or
11 what you took out of the library?

12 A. The installation media, et cetera, yes.

13 Q. So it -- nobody today, in fact, could actually say
14 everything you put in the library and everything you took
15 out or when that happened?

16 A. Are you talking about the library part that we're
17 talking about that got deleted before the litigation?

18 Q. Yes?

19 A. Yes. We actually have a picture that we presented
20 in the opening.

21 Q. You have a picture of some file names. You don't
22 have any records of all the software, the patches, the
23 fixes, the updates that went into the library, or what
24 people took out, and when, when they took it out, what they
25 used it for, you didn't audit any of that, did you?

1 A. I didn't personally audit it, no.

2 Q. You're not aware of anybody else auditing it, are
3 you?

4 A. Not that I'm aware of, no.

5 Q. Okay. And so when you were talking about these
6 carefully controlled processes, all were you talking about
7 is when you were taking stuff for the client, not what you
8 were doing with it once you had it at the company; right?

9 A. I don't think that's an accurate statement.

10 Q. Okay. Well, you just -- you don't have any audit
11 records of what you did with this software when it was at
12 the company, do you?

13 A. I think we have pretty good records of what we did
14 for customers and each of the deliverables that we
15 provided. That was all turned over in discovery.

16 Q. That wasn't my question, was it, sir?

17 In this terms of what you were using -- okay,
18 you have a record of what you took from the customer, or
19 took for the customer, and what you gave to the customer.

20 But in terms of what you were actually using at
21 the company, the libraries, the general remote
22 environments, you don't have any audit records of what
23 software was going in those and what was coming out, do
24 you?

25 A. I think we had some records, but I'm not sure that

1 all of it was complete.

2 Q. You didn't have a carefully controlled process, an
3 audit trail of what was going into the libraries in the
4 general remote environments, did you?

5 A. Into the general remote environments, I think we
6 could easily trace them back. I think as your expert went
7 through, they were all coded with special names and numbers
8 so that they could be traced back, yes.

9 Q. We had to go through with an expert to do that. You
10 weren't doing that, were you?

11 A. Well, clearly we knew where they came from, that's
12 how the designations were derived; right.

13 Q. What the expert found was you were moving fixes
14 around from clients, you were cloning. But the point is,
15 you weren't doing any auditing of your environments or your
16 libraries, right, of what was going in or what was coming
17 out?

18 A. Well, I mean, we were ISO process certified
19 eventually, so I think there was clearly process and audit
20 associated with it.

21 Q. All right. When were you ISO process certified?

22 A. Our ISO quality processes I believe were put in 2009
23 or '10.

24 Q. 2009 or '10. So from -- and did your ISO process
25 certification, the ISO group, did they look at the

1 libraries?

2 A. I don't know the exact detail, but there are
3 detailed diagrams that are part of every process in the
4 company and --

5 Q. Yes or no, sir, did they look at the libraries?

6 A. That I really don't know offhand.

7 Q. Did they look at your general testing and
8 development environments?

9 A. Well, they wouldn't have gone into the detail. They
10 would have looked at the way that they're set up, and they
11 would have looked at the flows, yes.

12 Q. ISO auditing has nothing to with the libraries and
13 the testing and development department stuff?

14 A. Well, it does have to do with our processes and how
15 we move things around within the organization, yes.

16 Q. All right. But it doesn't say no one's auditing as
17 to what's going in the environments and what's coming out,
18 nobody's auditing what's going in the library and what's
19 coming out?

20 A. No. Again, I don't know the details on this, quote,
21 installation media library.

22 Q. You don't know the details, but you're telling
23 customers that you have a careful controlled process and do
24 you know the process; right?

25 A. Well, this email specifically talks about the

1 downloads that we were going to do for the customer, so,
2 yes, it's accurate.

3 Q. Let's look at 1587, please.

4 THE COURT: Did you offer 4937?

5 MR. ISAACSON: I would move to admit 4937.

6 THE COURT: It will be admitted.

7 (Plaintiffs' Exhibit 4937 received into
8 evidence.)

9 MR. ISAACSON: This is 1587. This has not been
10 admitted. I would move to admit it subject to the existing
11 objection.

12 THE COURT: Are there any additional objections
13 to that, Mr. Webb?

14 MR. WEBB: None other than as previously stated,
15 Your Honor.

16 THE COURT: All right. It will be admitted
17 subject, of course, to the previous objection.

18 (Plaintiff's Exhibit 1587 received into
19 evidence.)

20 BY MR. ISAACSON:

21 Q. All right. This is you talking to Mr. Chiu in
22 August 30th, 2007. Do you see that?

23 A. Yes.

24 Q. And you say, "Here is a copy of what we told that
25 Santa Fe Tobacco Company about the differences in

1 onboarding processes between us and TomorrowNow."

2 Right?

3 A. Yes.

4 Q. Okay. And you're actually being careful here. When
5 you tell customers what you're doing, you're only telling
6 them about the onboarding process, when you take in the
7 software. You're not talking to them about the libraries
8 and the general testing environments; right?

9 A. Again, didn't see a need to.

10 Q. And the -- and you are reassuring this customer that
11 you are different from TomorrowNow, and you say in the
12 paragraphs, "Rimini Street starts by helping you ordering
13 delivery"?

14 A. Yes.

15 Q. Okay. That's the onboarding process; right?

16 A. Yes. When we bring a new client, when they sign a
17 new contract, or right before we -- there's a lot of steps
18 they need to do to get ready for service from us.

19 Q. And you told customers that Rimini Street does the
20 downloading, in the middle paragraph, at it's own site
21 using a very controlled, proven process that assures the
22 type of unacceptable issues that happened at TomorrowNow
23 can't happen at Rimini Street ever."

24 That's what you were telling clients?

25 A. Yes.

1 Q. All right. And at this point or shortly after this,
2 I think when we looked at PTX 30, you learned that
3 TomorrowNow had remote testing -- not remote
4 environments -- let me start over.

5 You learned that TomorrowNow had general testing
6 and development environments, and they were halting those,
7 they weren't going to touch the Oracle software anymore?

8 A. Correct. That's what their parent company
9 apparently told them that we had heard, yes.

10 MR. ISAACSON: Can we look at 619. This was --
11 I move to admit 619 subject to the same objection.

12 THE COURT: All right. Are there any additional
13 objections on behalf of the defense.

14 MR. WEBB: None other than previously stated,
15 Your Honor.

16 THE COURT: All right. It will be admitted.
17 (Plaintiffs' Exhibit 619 received into
18 evidence.)

19 BY MR. ISAACSON:

20 Q. Now, Mr. Ravin, this is an email you wrote in
21 June 2008 internally into your company about what you had
22 told a company called Acushnet; right?

23 A. Yes, the golf company, yes.

24 Q. And that customer's biggest challenge was her
25 understanding why Rimini Street would not end up in the

1 same boat as TomorrowNow, and you said, "I explained what
2 allegedly got TomorrowNow into trouble and our extreme
3 rigor to insure that never happens here."

4 Right?

5 A. Yes.

6 Q. Okay. You were assuring them that you were rigorous
7 and TomorrowNow was not?

8 A. Yes, that from what we had read, that our process
9 was different and we were very confident in it.

10 MR. ISAACSON: Okay. Looking at three -- move
11 to -- I guess that was admitted.

12 396 I would move to admit subject to the same
13 objection.

14 THE COURT: Any further objection?

15 MR. WEBB: I'm sorry, Bill, what was the number?

16 MR. ISAACSON: 396.

17 THE WITNESS: Okay. I'm there.

18 MR. WEBB: Just the same objections, Your Honor.

19 THE COURT: All right. The objection is
20 preserved and overruled. The exhibit is admitted.

21 (Plaintiffs' Exhibit 396 received into
22 evidence.)

23 BY MR. ISAACSON:

24 Q. Exhibit 396, now you're talking to -- about what
25 messages you're giving to Wendy's; right?

1 A. I'm sorry. I'm just reading this a second, please.

2 Q. Do I have this right, this is about your
3 communications with Wendy's?

4 A. Yes.

5 Q. And on the first page you write to one of your
6 salespeople, whose name I mispronounced before, Hakenewert?

7 A. Hakenewert, yes.

8 Q. Hakenewert. I give up.

9 "Rimini Street uses detailed log files and
10 security precautions to assure that such activities are
11 carefully monitored, detailed, controlled, and audited for
12 accuracy."

13 And you were talking about TomorrowNow after the
14 lawsuit. You were saying "we're different from
15 TomorrowNow, we're careful, we're auditing."

16 A. Yes. Every download, we took precautions with the
17 log-in ID that was authorized and making sure it was turned
18 off after and keeping a log of all the files downloaded.

19 Q. It's clear this was a generalized message that you
20 were giving the clients; right?

21 A. Yes, as of that date, yes.

22 Q. All right. It would be hard to estimate how many
23 clients you gave this message to?

24 A. I hope we gave it to a lot of prospects, yes.

25 MR. ISAACSON: All right. I'll ask you to look

1 at 5457. Now, 5457, I don't have a note -- I don't think
2 it's been admitted.

3 COURTROOM ADMINISTRATOR: No, it's not.

4 THE WITNESS: Yes, I'm on 5455.

5 COURTROOM ADMINISTRATOR: 5457.

6 THE WITNESS: 5457. That would help.

7 MR. WEBB: Your Honor, without reading this
8 closely, I can't determine if I need to make my previous
9 objections.

10 MR. ISAACSON: You don't need to.

11 THE COURT: I think it's in evidence.

12 COURTROOM ADMINISTRATOR: No.

13 THE COURT: Is this a new subject matter?

14 COURTROOM ADMINISTRATOR: It's new.

15 BY MR. ISAACSON:

16 Q. 5457, the -- here you're talking to a customer
17 called -- talking about your discussions with Correctional
18 Medical and their legal team; right?

19 A. It appears so, right.

20 Q. All right. This is March 26, 2007. And you're
21 talking to Mr. Davichick about this; right? About
22 Correctional Medical?

23 A. Yes.

24 Q. Okay. And going to the bottom of the first page,
25 all right, you say, "They're forwarding what the legal

1 people from Correctional Medical are saying," and there's
2 an item 5D?

3 A. Yes.

4 Q. So the legal people from one of your customers are
5 saying, "As I understand, we wouldn't need to provide a
6 copy of the software to Rimini Street. Also, I don't
7 believe Oracle/PeopleSoft would allow us to provide a copy
8 of the software."

9 You had a customer's legal department telling
10 you that they didn't believe they were allowed to give you
11 copies of the software; right?

12 A. Yes, we'd had several customers say that over the
13 years.

14 Q. Right. You had several customers, including lawyers
15 from those customers, tell you you shouldn't be taking
16 copies of the software?

17 A. They weren't sure that there was a right to give it
18 to us, that's correct.

19 Q. Well, it was stronger than that, wasn't it, sir?
20 They told you they didn't think you had the right to do
21 what you were doing?

22 A. Right. And for those customers who made that
23 choice, we did remote support.

24 Q. So if a customer said to you "we think what you're
25 doing is illegal," we wouldn't have copies on the Rimini

1 system, you would just have copies on the customer system.
2 But unless a customer said that, you would put the copies
3 on the Rimini system?

4 A. Well, sure. As we've talked about earlier, if a
5 customer said that they didn't believe their contract had
6 the right for it, then we said, "Fine, we will work with
7 you the way your contract says it should be worked with."

8 Q. Let's look at 5459?

9 A. Uh-huh, I'm at 5459.

10 Q. All right. This is on the same day. Again, March
11 26 -- I'm sorry, not the same day.

12 COURTROOM ADMINISTRATOR: That's not admitted.

13 MR. ISAACSON: Right. I move to admit 5459.

14 MR. WEBB: No objection, Your Honor.

15 THE COURT: It's admitted.

16 (Plaintiffs' Exhibit 5459 received into
17 evidence.)

18 BY MR. ISAACSON:

19 Q. I guess, ironically, this is on March 26, exactly
20 one year later, and now you're talking about a SonicWall.

21 And SonicWall is writing to you giving you
22 comments from their legal department in the middle of the
23 first page; right?

24 A. Correct.

25 Q. And they say,

1 "The programs that execute the mirror
2 environment are protected by copyright. The license
3 agreements under which we obtain the programs carry a
4 prohibition against copying. My understanding of this
5 document is that Rimini Street wants us to copy these
6 programs and give them so they can provide support to us.
7 That is a big problem since we would need the consent of
8 each of the licensors to make those copies."

9 A. Yes, that's what it says.

10 Q. You had more legal warnings from clients with legal
11 departments that what you were doing was copyright
12 infringement.

13 But unless the customer told you not to --
14 unless the customer told you they only wanted remote
15 environments, that is, environments on their system, you
16 went ahead with the general environments on the Rimini
17 system; right?

18 A. I wouldn't agree with that broad statement.

19 This is a customer telling us they believe their
20 specific contract doesn't allow it, and so we would work
21 with that.

22 Q. Well, when you say you would work with that, what
23 you mean is that if a customer said what you're doing is
24 illegal, you would say, "fine, we'll put it on your
25 system."

1 But for the other customers who didn't say that,
2 you would put the copies on the Rimini system; right?

3 A. If we didn't have a reason from a customer raised
4 that they believed that there was an issue with us, then,
5 no, we believed that the standard license agreement allowed
6 for us to have a copy.

7 Q. Even when customers were telling you, and their
8 legal departments were telling you, that what you were
9 doing was illegal?

10 A. Well, they said we couldn't do it within the
11 confines of the contract we were proposing with that
12 customer, and we would accommodate that.

13 Q. I'd like to get an answer to my question, sir.

14 Even when customers were telling you, and their
15 legal departments, that what you were doing was illegal,
16 you continued to build the environments on the Rimini
17 system?

18 A. That's not true.

19 Q. Well, let's find out what part of that wasn't true.

20 You had customers telling you what you were
21 doing was illegal; right?

22 A. They had us -- telling us that they didn't believe
23 that the contract terms we proposed were acceptable under
24 their license agreement.

25 Q. They told you -- we just looked at a customer who

1 told you what you were doing was illegal, SonicWall?

2 A. Didn't say that. It says that based on their
3 license agreement, it says that their license agreement
4 doesn't permit it.

5 Q. Oh, so you would just assume their license agreement
6 was different from everybody else's? Is that what you're
7 saying?

8 A. I've negotiated enough license agreements to know,
9 yes, license agreements do vary.

10 Q. So you didn't -- so your view, when you thought you
11 were covered by the license agreements, was that the
12 license agreements had a lot of variations; is that right?

13 A. But standard provisions that always allow the third
14 party to do work on behalf of the customer, yes.

15 Q. Okay. Let's break that down.

16 You thought there was a standard provision that
17 allowed for third parties to work, but then there were
18 additional restrictions that might stop a third party from
19 working in some of the licenses. Is that what you thought
20 was going on?

21 A. If those license agreement negotiations included
22 such provisions that were negotiated.

23 Q. Right. And so when you say that you had a belief
24 that what you were doing was legal, you didn't have any
25 information unless the client happened to tell you about

1 the variations in the licenses?

2 A. That's my prior testimony, yes.

3 Q. And, in fact, you didn't know -- if you were relying
4 on that one general provision that you say was in there,
5 you didn't even know if the restrictions on putting copies
6 on your system were common through the license agreements.
7 You didn't know whether that was a standard provision;
8 right?

9 A. Well, I didn't expect it to be a standard provision,
10 again, based on my experience in the industry of 30 years,
11 yes.

12 Q. Your experience in the industry of 30 years was
13 PeopleSoft licenses in 2001 and before; right?

14 A. And other licenses that customers had presented or
15 we'd seen online for publicly available documents, yes.

16 Q. Now, and just looking at 5459, this client was
17 telling you that you were going to be violating Oracle's
18 copyrights; right?

19 A. This is from their legal department reading their
20 contract, and they said that based on what we were asking
21 them to do in the contract, that they believed there was a
22 conflict.

23 Q. All right. And you just assumed that for other
24 customers that wouldn't be the case; is that right?

25 A. Yes. When you're serving IBM and many other large

1 companies, yes, you know that they do look at their license
2 agreements carefully.

3 Q. All right. Let's look at PTX 495. This has been
4 preadmitted.

5 This is Beth Lester who is an executive with
6 Rimini Street; right?

7 A. Yes, she's been on leave for a couple years from
8 Rimini.

9 Q. And she's talking to Mr. Davichick who was either
10 the head of sales, or the head of sales because he was the
11 only one in sales, in March -- in April 2007; right?

12 A. Yeah. I think he was the only one in sales.

13 Q. Okay?

14 A. Actually, I'm sorry, there were actually two sales
15 reps at that point. Rich Hughes had joined us.

16 Q. All right. And what she writes, Beth Lester writes,
17 "No more" -- in the middle of the page, "no more
18 options for customized tax and regs per prior discussion
19 with Seth. I brought it up during our kickoff call because
20 we offered this to them prior. Notice how I steered them
21 into vanilla."

22 Some new terms?

23 A. Yes.

24 Q. So customize -- well, vanilla means it's an
25 unmodified environment, it's just plain vanilla. You've

1 got the software, you're not making any tweaks or
2 customizations to it. Is that generally right?

3 A. Yes. A vanilla environment means it's as was
4 delivered from Oracle, so no customization to it. It's
5 exactly what vanilla means, yes.

6 Q. And what she's saying is we don't -- she had talked
7 to you, and you weren't going to be doing any
8 customizations for tax and regulations. That would be for
9 PeopleSoft; right?

10 A. Yes. It requires a little explanation though.

11 Q. So she's steering the customers towards vanilla
12 environments. Don't use the customizations, use the
13 vanilla environments; right?

14 A. Yes.

15 MR. ISAACSON: Okay. Now, let's look at 2159.
16 2159 has been preadmitted.

17 THE WITNESS: All right. I'm at 2159.

18 BY MR. ISAACSON:

19 Q. This is August 2008. This is from Mr. Chiu, and
20 he's writing to, among others, Beth Lester, Brian Slepko,
21 George Lester, Mr. -- is it Bengé?

22 A. Yes, Jim Bengé.

23 Q. All right. These are some of the most senior people
24 at Rimini Street at the time other than you; right?

25 A. Yes.

1 Q. And he says,

2 "I'd like to gather everyone's" -- in the second
3 paragraph, "I'd like to gather everyone's input regarding
4 the topic of selling/supporting our message."

5 All right. And he goes on to say,

6 "While we've always 'sold' the benefit of having
7 a copy of the client's production database for our tax
8 development work, it's also been positioned as a benefit to
9 the client to better support their customizations."

10 What he's saying there is one of your sales
11 messages is "we want these general testing and development
12 environments so that we can offer you customization of your
13 environments and not just plain vanilla environments."

14 Is that right?

15 A. I'd say it differently. Could I explain?

16 Q. I'm sure you would say a lot of things differently,
17 but I would like a yes or no answer?

18 A. That's not an accurate description.

19 Q. Okay. The -- he is talking about that, as part of
20 your general sales pitch, that you say to the clients "we
21 will support customization."

22 A. That's not what he's referring to.

23 Q. Okay. That is part of your sales pitch, isn't it?

24 A. Yes, we support all customizations that a client
25 makes to their environment.

1 Q. And you use the -- your testing and development
2 environments to support those customizations, isn't that
3 right?

4 A. Depends on the customization, yes.

5 Q. So you use the testing developments to support
6 customizations though you also use other things; is that
7 fair?

8 A. That would be fair, yes.

9 Q. And Mr. Chiu says,
10 "The underlying truth is we aren't truly
11 leveraging their environments in such a fashion. It's
12 primarily purpose is that of a working, up-to-date
13 environment that's required for development of tax updates,
14 particularly in the absence of a viable, fix-master demo."

15 You're not actually using environments in that
16 fashion.

17 And then,

18 "To truly support our clients' ongoing
19 customization means regular synchronization of the clients
20 code changes, and possibly database refreshes over time,
21 resulting in significant overhead downstream challenges of
22 reconciling environmental discrepancies beyond our
23 infrastructure and team capabilities."

24 He is saying there that you are telling the
25 clients that you can support customizations with these

1 environments when that's not true; correct?

2 A. No, you're completely wrong in the way that you
3 understand this document.

4 Q. All right. He is saying that to truly support our
5 clients' ongoing customization means regular
6 synchronization, database refreshing over time, significant
7 overhead and downstream challenges, and that's beyond our
8 infrastructure and team capabilities; correct?

9 A. That's what he's saying, but your interpretation is
10 completely wrong.

11 Q. The --

12 A. I'm happy to explain to the jury if you want me to.

13 Q. No, I'll let your counsel -- I think it says what it
14 says.

15 And one topic I didn't cover with you. We've
16 talked about how you are the CEO of Rimini Street. You
17 also own roughly 70 percent of the company, right, of the
18 active shares?

19 A. Probably somewhere around that, yes.

20 Q. Okay. And back in November 2011 you put a value on
21 your stock holdings in Rimini Street of between 30 and 40
22 million; is that right?

23 A. Yes.

24 Q. Okay. And that's most of your net worth?

25 A. That's correct.

1 Q. And you also have family members who are invested in
2 the company; right?

3 A. Yes.

4 Q. Okay. And, now, one of your goals for the company
5 in making it valuable is something you call scalability;
6 right?

7 A. Yes, which means to be able to serve more and more
8 customers more efficiently over time.

9 Q. All right. To have -- to have fewer people or the
10 same amount of people serve more customers?

11 A. Yes, essentially that would be -- that would be a
12 correct way to look at it, although you're adding people
13 all the time, yes.

14 Q. And you have actually said to people about the value
15 of your company that it should be given a valuation that's
16 similar to a software company because of that scalability;
17 right?

18 A. Yes. A software company gets highly valued because
19 of the concept of building one piece of software and being
20 able to sell it multiple times, yes, at low cost.

21 MR. ISAACSON: All right. Let's look at PTX 12
22 which has been preadmitted.

23 THE WITNESS: Give me a second. I'm drowning in
24 binders.

25 Okay. I'm at PTX 12.

1 BY MR. ISAACSON:

2 Q. And you're talking to someone in this email named
3 Scott. Is he -- from El Dorado. Is he a potential
4 investor? Who is he?

5 A. Yeah, that's El Dorado Capital. They're a Silicon
6 Valley investor that puts money in technology companies.

7 Q. All right. And what you argue to him on the first
8 page in point one is you're talking about the valuation for
9 your revenue.

10 A. Yes.

11 Q. And you expect a 3 to 4X with the same type of
12 business, because he had been saying I think it should only
13 be 1 to 2X.

14 And you see scalability closer to a software
15 company than a consulting company. You wanted to get the
16 same type of valuation as a company that makes software
17 without producing any software?

18 A. Well, I think as we said closer to. You can't get a
19 software valuation being a services company.

20 Q. All right. You want to get something closer to a
21 software company without actually having to make the
22 software.

23 A. Right.

24 Q. And to do that, you built a business -- you had your
25 business model, and you saw me show this in opening

1 statement, said that your business focuses on the most
2 profitable component of software business, annual
3 maintenance fees, without any of the capital investment
4 required to develop software. That is accurate, was it?
5 That's your goal?

6 A. Yes.

7 Q. Okay. And at this point, as I understand it,
8 there's also a concept in your business of a backlog of
9 bookings?

10 A. Yes, this is like aircraft orders that the customer
11 can cancel, they're not really committed, but they give you
12 an idea of the future, yes.

13 Q. Right. And by the -- so by the end of 2011, 2012,
14 do you remember what your backlog of bookings were?

15 A. Sorry, not offhand.

16 Q. Okay. Today can you measure them?

17 A. Today I know what they are, yes.

18 Q. What are they?

19 A. About one point -- I think they're 1.6 billion.

20 Q. The -- your -- your -- your counsel talked about the
21 term forced upgrades in opening statement, and that's
22 referring to new upgrades to new versions of the software;
23 right?

24 A. Yes, that a vendor requires that a customer install
25 in order to be eligible to continue support.

1 Q. All right. And Rimini Street, at least until -- at
2 least through 2011, as I understand it, did not provide any
3 security updates to its clients; right?

4 A. That's correct.

5 Q. And, in fact, you actually told customers that they
6 weren't necessary, and they -- you told them they weren't
7 necessary; right?

8 A. Yes, because it's an outdated model relative to what
9 we call holistic security today.

10 Q. Yeah. All right. Holistic security means don't put
11 security in the software, just put it in the firewall at
12 your place of business; right?

13 A. It's actually the most innovative version available
14 today for security people, yes.

15 Q. All right. But it involves not putting any security
16 updates in the software to deal with hackers; right?

17 A. Right. It's called virtual patching and firewall
18 systems, yes.

19 Q. Right. And the firewall systems are systems that
20 are maintained by the client, the customer, not by Rimini
21 Street for the customer; right?

22 A. That's correct. They're responsible for their own
23 firewalls and their own security protections.

24 Q. You tell them, "gee, the way it should work is you
25 should upgrade your firewalls, you should protect yourself,

1 and we don't need to put any security in our -- security
2 updates in the software."

3 Right?

4 A. Yes, that's the -- if you go out and look at the
5 white papers, that's security patching and holistic
6 security, yes.

7 Q. All right. That was part of your sales
8 presentations, wasn't it?

9 A. I'm sure it was because, again, we can't provide
10 security patches because we don't have those parts of
11 source code for Oracle products.

12 Q. Let's look at example 5433 -- I'm sorry, 5455.

13 A. Okay. I'm on 5455.

14 Q. All right. And the -- this is an email from Krista
15 Williams talking about how to talk to customers. Do you
16 see that?

17 A. Yes.

18 Q. All right. And it says -- this is July 2009 --

19 MR. ISAACSON: Do I need to move to admit this?
20 Yeah, I move to admit 5455, your Honor.

21 MR. WEBB: No objection, Your Honor.

22 THE COURT: It's admitted.

23 (Plaintiffs' Exhibit 5455 received into
24 evidence.)
25

1 BY MR. ISAACSON:

2 Q. All right. In the middle, the question is asked,
3 "Are security patches part of the maintenance
4 agreement similar to tax and regulatory updates?"

5 "Answer, the biggest security threat is
6 unauthorized access to a client's network."

7 And it concludes a little farther down, "The
8 strategy that we recommend" --

9 MR. ISAACSON: Right above the paragraph --
10 right above that, Matt. There we go.

11 BY MR. ISAACSON:

12 Q. "The strategy that we recommend to our clients is to
13 shore up all other aspects of security such as user
14 accounts, network access, firewall rules and system
15 architecture."

16 You recommend that they handle the security and
17 that you not worry about security upgrades for the
18 software; right?

19 A. That's absolutely correct. That's the holistic
20 security model, yes.

21 Q. All right. And when -- another term, you said --
22 well, we're talking about upgrades, we're talking about new
23 versions of the software; right?

24 A. Yes. Again, there's always semantics, but
25 essentially it means a big version, a next big release that

1 requires a lot of labor to install, yes.

2 Q. And that's -- Rimini Street doesn't provide any of
3 those new versions?

4 A. Not at all. We keep their existing software
5 licenses working, yes.

6 Q. And you don't provide any of the security updates.

7 A. No, but we do provide security guidance. We have a
8 security team called Global Security, yes.

9 Q. You have guidance so you tell the customer what they
10 should be doing with their systems?

11 A. That's correct.

12 Q. Okay. And you're charging generally 50 percent off
13 support of what Oracle is, charging but you're doing that
14 without providing the upgrades to the new versions, without
15 the security updates, and you are projecting 50 percent
16 margins for that; right?

17 A. Yes. We provide a different set of services. It's
18 a competing offer that's not one-to-one. Oracle does some
19 things we can't, and we provide some services that Oracle
20 doesn't.

21 MR. ISAACSON: The -- I'm going to go back to
22 how you built your business. We talked some about
23 references.

24 Can we look at 245. 245 has been preadmitted.

25 THE WITNESS: Okay. I'm there.

1 BY MR. ISAACSON:

2 Q. This is you writing to someone, Andrew Neville, in
3 August 2008, as well as to Mr. Davichick.

4 A. Both salespeople. Yes.

5 Q. You say,

6 "Ahhh...we have built a business on
7 nickel-and-dime clients. While nickel-and-dime clients
8 don't provide much revenue, they usually more than make up
9 for it in fantastic references and a willingness to
10 participate in media events that other Fortune 500s often
11 will not do due to publicity restrictions."

12 So references were how you built your business;
13 right?

14 A. References get you the account, but if you don't
15 deliver, they're gone, yes.

16 Q. Okay. And you had a whole internal infrastructure
17 to track references that you -- you tracked who was giving
18 you references, you tracked who was likely to give you
19 references, you tracked who your top reference clients
20 were?

21 A. Yes, absolutely.

22 MR. ISAACSON: Okay. And let's look at 428
23 which has been preadmitted.

24 MR. ISAACSON: This is sort of small print, but
25 Matt will make it bigger for you.

1 BY MR. ISAACSON:

2 Q. And this is in 2010, you're tracking who is giving
3 you the most -- which of your customers are giving you the
4 most number of references for JDE, PeopleSoft, and Siebel,
5 as well as SAP which we won't talk about?

6 A. Yes.

7 MR. ISAACSON: All right. Can we look at some
8 slides here. Let's look at the top, Siebel references.

9 BY MR. ISAACSON:

10 Q. All right. We've put -- we took the top Siebel
11 references, XO, Epicor, Wenger, Novell and Enable, and put
12 them around the circle from that 428. Do you see that?

13 A. Yes.

14 Q. All right. And we also made a note here, for
15 Enable, you got references from FileNet, Beekley, and
16 Orbitz; right?

17 You got references -- in order to get Enable,
18 you got references from some earlier customers, FileNet,
19 Beekley, Orbitz. Does that sound right?

20 A. I don't remember. I think it was in a prior
21 document we looked at.

22 Q. Okay. And Enable gave a reference, in fact, to
23 Novell?

24 A. Are you asking me to confirm that?

25 Q. Do you remember?

1 A. I have no recollection.

2 Q. The -- several of these reference customers had the
3 environments; right?

4 A. If you're telling me that's what it is.

5 Q. This is part of the stipulation, four out of the
6 five, and then you had the Oracle library during this
7 period; right?

8 A. You're putting it up there.

9 Q. Yeah. And then you had two of these companies who
10 received those DVDs of Oracle SupportWeb that you took
11 using one customer's sign-in and then distributing them to
12 other customers?

13 A. Yes. Again, all of them entitled to the same
14 material.

15 Q. So if these are the companies that you're building
16 your ongoing Siebel business from, and they have -- and
17 they all have these practices that we've been talking
18 about; right?

19 A. I assume -- you want me to confirm what's on your
20 screen?

21 Q. Does it sound right to you?

22 A. Again, I don't independently remember.

23 Q. Okay. How about the JDE references?

24 All right. We got JDE references with
25 environments, and the library was in existence with JDE

1 material; right?

2 A. I'll go with the stipulation that you've said.

3 Q. All right. Let's look at PeopleSoft. You listed
4 your top PeopleSoft references?

5 A. By the way, Yum Foods, for people who don't know, is
6 Taco Bell, KFC and Pizza Hut.

7 Q. The -- you had these -- your top PeopleSoft
8 references, all but one have the environments. You had the
9 Oracle library with the PeopleSoft.

10 You had all of them with cross-use of fixes
11 according to Professor Davis, and then cloning for all but
12 one.

13 Does that all sound to you consistent with the
14 facts?

15 A. Again, I can't independently say.

16 Q. All right. Now, the reason that you had these --
17 well, let's actually ask -- I want to ask you about those
18 JDE environments.

19 Sorry, I lost my place.

20 Let's talk again about what you were telling the
21 customers. I think we -- are we in agreement that as part
22 of your standard messaging you told customers they would
23 not be violating their customer license agreements?

24 A. That was our belief, unless they gave us information
25 to the contrary that we just didn't take into account.

1 Q. You told them more than your belief, you told them
2 we fully comply with your license agreement; right?

3 A. Yes.

4 Q. All right. And you told them that you respected
5 Oracle's intellectual property in ensuring that their
6 rights under each of the software license agreements are
7 enforced; right?

8 A. Yes.

9 Q. That was standard messaging by your company; right?

10 A. Yes.

11 Q. In fact, counsel, at the opening statement, held
12 up -- had a slide with shoes on it that you stood in the
13 shoes, that was a line you used to customers, that you
14 stood in their shoes?

15 A. Yes, we believed we stood in the shoes of the
16 customer in their license agreement.

17 Q. In fact, you told customers you had a zero tolerance
18 policy for inappropriate conduct related to intellectual
19 properties?

20 A. Yes, any violation of intellectual property would be
21 dealt with.

22 Q. And when customers told you they had concerns that
23 you -- that there would be violations of the license
24 agreements, you tried to tell them not to be concerned;
25 right?

1 A. Yes. Well, if they wrote me back and said they
2 weren't sure whether their license agreement allowed, for
3 example, for us to have copies, I would write back and say
4 to my knowledge, yes, based on my experience, I believe
5 that is correct, unless they give me information to the
6 contrary.

7 Q. All right. Well, let's talk about that. Unless
8 they give you information to the contrary.

9 MR. ISAACSON: Let's look at 4936, which I need
10 to admit, and I move to admit.

11 THE COURT: Let me interject. Ladies and
12 gentlemen, we've gone off a little bit of our regular
13 schedule with breaks.

14 Are there any of you who would like to take a
15 short break?

16 It appears that we're all right. Let's go
17 forward.

18 MR. ISAACSON: I've never seen a jury say that.

19 THE COURT: Well, it only takes one hand.

20 MR. ISAACSON: All right. Do you have 4936?

21 THE WITNESS: Yes, I do, sir.

22 MR. ISAACSON: May I admit it?

23 MR. WEBB: No objection, Your Honor.

24 THE COURT: It's admitted.

25

1 (Plaintiffs' Exhibit 4936 received into
2 evidence.)

3 BY MR. ISAACSON:

4 Q. These are notes you're responding to a customer,
5 Correctional Medical; right?

6 A. That's what it appears, yes.

7 Q. And you tell them in section 5D -- you're answering
8 their question. They say,

9 "As I understand we wouldn't need to provide a
10 copy of the software to Rimini Street. Also, I don't
11 believe Oracle/PeopleSoft would allow us to provide a copy
12 of the software."

13 And in response you say,

14 "Rimini Street needs copy of software we help
15 you place with Oracle like all other clients to build test
16 and development environments for updates. This is offsite
17 test/dev environment, and you are okay to have as many as
18 necessary just like outsourcers or hosted environments."

19 So they told you that they didn't believe they
20 were allowed to give you copies, and you said, "it's okay
21 for us to get as many as possible," and you didn't say
22 anything like "unless you tell us otherwise," or "go read
23 your license agreement," or anything like that, you just
24 said, "it's okay to have as many as necessary." Right?

25 A. Yes, this is exactly the response that we gave them.

1 Q. All right. And that was your typical response.
2 Customers would say, "gee" -- if a customer said, "gee, we
3 don't think we're allowed to do this," you would say "it's
4 okay, you can give us as many copies as you want."

5 A. I don't think that's what it actually says there.
6 It says we can create as many test and development
7 environments as necessary.

8 Q. Okay. Well, thanks.

9 So you would -- if a client said "we don't think
10 we're allowed to do this under our agreement," you would
11 say "we are allowed to have as many test and development
12 environments as you want."

13 A. Yes, unless they say that their license agreement
14 reads otherwise.

15 Q. Well, you didn't say anything about unless your
16 agreement says otherwise; right?

17 A. Not in this particular document, no.

18 Q. All right. Are you aware -- well, I will look
19 forward to the documents that do have that, where you say
20 "unless your agreement says otherwise."

21 A. Well, I think if you look, most of these documents
22 that we are talking to are lawyers, are people in
23 procurement who have expertise in contracts.

24 Q. Okay. If there are any documents where you said
25 "unless your contract says otherwise," I will look forward

1 to seeing them.

2 They -- let's look at 23. You mentioned
3 Brazoria County before?

4 A. I'm sorry, is that PTX 23?

5 Q. Yes.

6 COURTROOM ADMINISTRATOR: It's not admitted yet.

7 MR. ISAACSON: It's not? No, it's not. I don't
8 know why not.

9 MR. WEBB: No objections, Your Honor.

10 THE COURT: All right. It's admitted.

11 (Plaintiffs' Exhibit 23 received into
12 evidence.)

13 BY MR. ISAACSON:

14 Q. All right. You're copied at the top of 23 on a
15 discussion -- on a message that's been sent to you from an
16 attorney for Brazoria County in Texas?

17 A. Yes, who is the district attorney for Brazoria
18 County.

19 Q. This is on the second page, the message is coming
20 from Trey Picard, Assistant District Attorney, Brazoria
21 County in Texas?

22 A. That's our client.

23 Q. He writes to you on the first page, or writes to
24 your company,

25 "Our office is reducing Rimini Street, Inc.'s,

1 proposed contract with Brazoria County."

2 He says, "While our review of your company's
3 terms is ongoing, we have one initial concern about whether
4 your company's business model for providing support
5 services (i.e., the copying or downloading of the support
6 reference materials from PeopleSoft or Oracle using the
7 county's online support account access code) would violate
8 the terms of the county's initial license agreement with
9 PeopleSoft."

10 And he actually refers to specific sections.

11 Now, in response to him, you wrote him
12 Plaintiffs' Exhibit 24 which has been preadmitted, and your
13 response is on page 2?

14 A. Yes.

15 Q. All right. And you were writing to Brazoria County
16 now, and it's being written on your behalf, but you're the
17 one who drafted this; right?

18 A. Yes, I drafted the response.

19 Q. All right. And you talk, just like your counsel did
20 in opening statement, about your background with
21 PeopleSoft, Background and Qualifications of Reviewer?

22 A. Yes.

23 Q. All right. And after you do those background and
24 qualifications, you do Findings and Opinion?

25 A. Yes.

1 Q. All right. And you say at the top of Findings and
2 Opinion,

3 "Best practices for all PeopleSoft releases
4 include the use of at least two test and development
5 environments."

6 All right? One of which is for demo, one of
7 which is that vanilla environment you were talking about?

8 A. Yes.

9 Q. So you're saying that's what best practices is?

10 A. Yes, as from PeopleSoft, yes.

11 Q. And at the bottom of that paragraph, you say,
12 "Because of these realities of need," that's the need to
13 have the environments; right?

14 A. It's the need to have a wider amount of testing
15 environments due to the PIA architecture, which more
16 pieces, more levels, yes.

17 Q. The need refers to your need to have those testing
18 and development environments; right?

19 A. No, I believe the need refers back to the change in
20 the PIA architecture.

21 Q. Okay. But you had a need for those environments,
22 didn't you?

23 A. Well, certainly. Anyone providing support needs
24 test and development environments, whether they're local to
25 us or whether remote to a customer.

1 Q. And so you say, continuing,

2 "Because of these realities and need, we never
3 counted actual test and development systems, but instead
4 focused on license compliance for production systems only."

5 So what you're saying to Brazoria is, because of
6 the realities and need, you never counted the test -- you
7 never applied the actual test and development systems to
8 the issues of license compliance. For that, you look to
9 the production systems only. Right?

10 A. That's correct. PIA architecture required
11 production system accounting but not tested development
12 systems.

13 Q. So that's another new term, production systems.

14 Production systems is when I actually sit in my
15 office and have the software and work with it; right?
16 That's what the customer's using on a daily basis?

17 A. It's the piece of software that's actually running,
18 so the one that's calculating payroll or calculating the
19 finances.

20 Q. It's not the testing, it's not the development, it's
21 not the troubleshooting, it's not any of that, it's the
22 actual thing --

23 A. It's the sacred production system that nobody should
24 touch unless they know what they're doing, yes.

25 Q. And so you're telling Brazoria County that you

1 focused -- you focused whether there was license compliance
2 only on one of these production systems and not with the
3 test and development systems; right?

4 A. Yes. I wrote most of those agreements for many
5 customers, so, yes.

6 Q. Have you seen a single license agreement with Siebel
7 that uses the term --

8 A. This is --

9 Q. -- production system?

10 A. This is PeopleSoft.

11 Q. I know. I'm going to go through each one.

12 Have you seen a single license agreement with
13 Siebel that uses the term production system or production
14 environment?

15 A. No, I'm not sure it does.

16 Q. How about PeopleSoft?

17 A. Yes, PeopleSoft does have production limitations,
18 yes.

19 Q. Okay. But do they have any -- have you seen any
20 agreement that says this license agreement only applies to
21 production systems and doesn't apply to testing and
22 development environments? Have you ever seen that?

23 A. Well, yes, the agreements that I wrote with
24 PeopleSoft have separate from, they list out production,
25 how many production copies you're licensed for, the

1 geography you can run it in, and talking about your ability
2 to use test and development systems as needed.

3 Q. Right. They say -- apparently you're referring to
4 some agreement that says if it exists?

5 A. These are part of the license agreement. They're
6 amendments to the core agreements written before 1999.

7 Q. So is it your testimony that there are license
8 agreements that say our licensing restrictions only apply
9 to production environments, they don't apply to testing and
10 development environments?

11 A. No, you're reading too broadly.

12 Q. Okay. So you are unaware of any license agreements,
13 Siebel, PeopleSoft, JD Edwards, that says that the
14 licensing restrictions apply only to production
15 environments and don't apply to testing and development
16 environments?

17 A. No, generally in a licensing agreement --

18 Q. Are you aware of any?

19 A. Oh, yes.

20 Q. Are you aware of any license agreements from those
21 three -- for those three types of software that say the
22 license restrictions apply only to production and not to
23 testing and development?

24 A. They do not say that related to the other terms.
25 They do call out production separate from test and

1 development.

2 Q. Okay. And because of this, your analysis of
3 production, you say in your conclusion to Brazoria County,

4 "In conclusion, it is our opinion based on
5 experience and industry knowledge that Rimini Street's
6 services do not violate the intent of the collective
7 provisions of Sections 2.1, 4.2 and 14.2 of the agreement."

8 All right? You didn't say to them -- and at
9 this point -- this wasn't -- this is after they gave you
10 the agreement; right?

11 A. Yes. I'm having a dialog with the district attorney
12 of Brazoria County, yes, a lawyer, yes.

13 Q. And you gave him your opinion of the intent of the
14 provisions based on this notion that the licensing
15 compliance applied to production systems only; right?

16 A. That's not what this actually says.

17 Q. But you said you would -- you focused at the top on
18 license compliance for production systems only; right?
19 That's what you wrote?

20 A. Yes, sir, but that's only relating to test and
21 development systems, not the general full license of the
22 product.

23 Q. And in response to that, Brazoria County had you
24 enter a contract which said that if you were sued -- they
25 were sued for copyright violations, you would have to

1 provide them indemnification, meaning you would cover the
2 costs and any damages associated with that; right?

3 A. That's true in every single contract we signed, yes.

4 Q. Okay. Now, Brazoria County was not the only one
5 that you told the license applied only to production
6 systems; right?

7 A. I'm sorry, you'll need to clarify that question.

8 Q. Let's look at 604 which, with any luck, is the first
9 exhibit -- one of the first or second exhibits in your
10 binder.

11 COURTROOM ADMINISTRATOR: It's not admitted yet.

12 MR. ISAACSON: It's not admitted. I would move
13 to admit it. Oh, I have a note it's preadmitted.

14 THE WITNESS: I'm at 604.

15 MR. WEBB: Either way, we don't object, Your
16 Honor.

17 THE COURT: It is admitted.

18 (Plaintiffs' Exhibit 604 received into
19 evidence.)

20 BY MR. ISAACSON:

21 Q. All right. Here you are talking about your
22 conversations with a customer named Spherion; right?

23 A. Yes.

24 Q. All right. And going to page 4 of 5, Spherion
25 writes to you --

1 MR. ISAACSON: Pull that up there on number one.

2 BY MR. ISAACSON:

3 Q. "I have received our legal team's review of the
4 Rimini Street agreement. Please address the following
5 concerns:

6 "One, intellectual property infringement - we
7 are concerned that the remedies Rimini offers (amount of
8 liability accepted) for potential infringement do not cover
9 the likely associated damages. This concern rises from the
10 TomorrowNow lawsuit as well as the potential use of
11 underlying Oracle software to perform Rimini support
12 services."

13 In this response to that, on page 1, you write
14 to the salesperson,

15 "Here is our response to the licensing concern -
16 please deliver this ASAP to Spherion.

17 "Section 2 of the Software End User License
18 Agreement and Services Agreements governs the restrictions
19 on transfer of title or 'lending' the software for 'use' by
20 others (in a production capacity)."

21 Put in parentheses "in a production capacity."

22 Essentially, this means -- "the license
23 agreement means that the software cannot be 'used' in
24 production by any other entity other than the licensee. As
25 Rimini Street is a third-party service outsourcer/provider

1 who is not operating the software in production and is not
2 'using' the software for Rimini Street's own internal
3 processing, this section has no impact on licensees right."

4 So to boil this the down, what you told them was
5 that this provision of the license agreement only applied
6 to systems that were used in production and didn't apply to
7 any of the other types of environments?

8 A. Yes, for that particular clause, yes.

9 Q. All right. And so when the clients wrote to you and
10 said "we want to talk to you about intellectual property
11 infringement and our concerns about that," you would push
12 back and you would say that the licensing provisions only
13 apply to production systems?

14 A. No, that's not an accurate statement.

15 Q. Well, that's what you wrote there, wasn't it? You
16 wrote --

17 A. In this particular email. That's not a general
18 statement.

19 Q. Okay. Well, we've seen it a couple times. Let's
20 look at -- well, let's look at what you said to Wendy's,
21 Plaintiffs' Exhibit 465. No, let's go to 35.

22 A. I'm sorry. Is that PTX 35?

23 Q. Well, I think -- let's start with 465. 465 is
24 Wendy's concern.

25 COURTROOM ADMINISTRATOR: It's not yet admitted.

1 MR. ISAACSON: I would move to admit 465.

2 THE WITNESS: Okay. I'm at 465.

3 MR. ISAACSON: 465, Mr. Ward from Wendy's is
4 writing Mr. Davichick on August 18th, 2008.

5 "Michael, here's our preliminary first" --

6 THE COURT: Wait a minute. I still haven't
7 ruled on its admission. I'm waiting for Mr. Webb.

8 MR. ISAACSON: I'm sorry.

9 MR. WEBB: Objection, hearsay, Your Honor.

10 MR. ISAACSON: It's not being admitted for the
11 truth, Your Honor.

12 THE COURT: This is Exhibit 0465; is that
13 correct?

14 MR. ISAACSON: Yes.

15 The relevant language would be on the first
16 page.

17 THE COURT: The first page is admissible, maybe
18 that alleviates the objection concern.

19 MR. WEBB: Objection. I'm sorry, Your Honor,
20 the objection concerns the attachment to this document.
21 It's an out-of-court statement from an unidentified party.

22 MR. ISAACSON: It's a draft contract, Your
23 Honor. There's no such -- there's no -- draft contracts
24 are not admitted for the truth, they're just admitted for
25 being drafts of contracts.

1 THE COURT: Overruled. I don't see that -- it's
2 not objectionable on a hearsay basis. It's a letter
3 seeking a response on behalf of Rimini Street.

4 MR. ISAACSON: All right.
5 (Plaintiffs' Exhibit 465 received into
6 evidence.)

7 MR. ISAACSON: Can we put the first page of 465
8 on the screen?

9 COURTROOM ADMINISTRATOR: The whole document's
10 admitted, Your Honor?

11 THE COURT: The entire document is admitted.
12 BY MR. ISAACSON:

13 Q. "Michael, here is our preliminary first round
14 changes to the contract that I spoke about. I'm very
15 concerned with the wording in our Oracle contract that
16 states -- Wendy's may not make the programs or materials
17 resulting from services available in any manner to any
18 third party for use in the third party's business or
19 operations. How are you dealing with other clients for
20 this appears to be pretty much boilerplate verbiage in the
21 Oracle contract."

22 So you had Wendy's telling you that there was
23 this boilerplate language that said you weren't supposed to
24 put things on a third -- you were not supposed to use this
25 material for use in a third party's business operations.

1 And then -- now let's look at your response,
2 which I believe would be Exhibit 35.

3 So Exhibit 35 is the response to that question
4 that you drafted; correct?

5 A. That seems to be, yes.

6 MR. ISAACSON: This has been preadmitted.

7 BY MR. ISAACSON:

8 Q. And you say, "In response to Jim Ward's question
9 about the following license language."

10 And you again refer, as your counsel did in
11 opening statement to your previous capacity at PeopleSoft
12 as a vice-president, and you say, "This particular language
13 is common in PeopleSoft license agreements."

14 Right?

15 A. That's correct.

16 Q. You agree that this is a standard provision of the
17 PeopleSoft agreements?

18 A. Yes.

19 Q. Right?

20 And you say,

21 "The meaning of this term is that" -- "is that
22 no third party business can use the software to 'run their
23 business operations,' as in the production use of the
24 software."

25 It's -- the way -- you tell them that what this

1 means is that Rimini Street can't take it and run
2 PeopleSoft to run -- run its own business, meaning
3 literally your employees, your salaries and all that.

4 A. That's correct. That's accurate.

5 Q. Right. And you say in the last paragraph,
6 "Rimini Street only uses its client's licensed
7 software as development and test (non-production)
8 environments to design, develop, and support Wendy's
9 production software. Therefore, there is no use by Rimini
10 Street to run its own business operations. Our 'business'
11 is supporting Wendy's PeopleSoft system."

12 So you were going ahead and advising clients
13 about what these contracts meant; right?

14 A. Yes. Giving them my opinion, yes.

15 Q. The other thing you told Wendy's in 35 was that --
16 just to make clear, is that you only use the client's
17 licensed software as development and test environments, to
18 design, develop and support Wendy's production software.
19 You don't use it to support others.

20 A. I'm sorry, is there a question?

21 Q. That was also a representation you were making to
22 Wendy's?

23 A. Yes.

24 Q. Okay. And I think we've touched on this before.
25 You would tell clients as part of your standard messaging

1 "we're only going to use your environments for your --
2 for -- to support you."

3 A. Software that you're entitled to to support you,
4 yes.

5 Q. Right. And, in fact, what we learned from Professor
6 Davis is that you, for example, used the Wendy's
7 environment to create fixes for other clients. You were
8 using environments that you told clients were only being
9 used for them to create fixes for other clients; right?

10 A. I think we've been through this a few times, but I
11 disagree with your characterization.

12 Q. Okay. Well, you were -- let's find out why.

13 You were using client environments to create
14 fixes for other clients; right?

15 A. We were creating using a generic environment on the
16 software, the same version and release to support multiple
17 customers on the same release. Yes.

18 Q. I'll try it again. You were using client
19 environments to create fixes for other clients; correct?

20 A. No, I again would disagree with you.

21 Q. So you were not -- at Rimini Street, is it your
22 testimony, using the environment of Client A to create
23 fixes that you then distributed to Client B or C?

24 A. If we had, again, across the generic -- I'm sorry.

25 If we had the same core software release, we

1 would use that, reuse that for customers who are on the
2 same exact license.

3 Customers who had their own customizations were
4 in their own individual silos, they were not allowed to be
5 used for other customers because they had different license
6 rights.

7 MR. ISAACSON: Your Honor, I would ask you to
8 direct him to answer the question, I'd like to repeat the
9 question.

10 THE COURT: Repeat the question.

11 BY MR. ISAACSON:

12 Q. So at Rimini Street you were using the environments
13 of Client A to create fixes that you then distributed to
14 Client B and C; correct?

15 A. No.

16 MR. ISAACSON: And -- PTX 15. All right. This
17 is April 2007. This has been preadmitted.

18 BY MR. ISAACSON:

19 Q. So let's put it on the screen.

20 Mr. Chiu is talking about one of your early
21 clients, Moraine Park Technical College. Do you see that?

22 A. Yes.

23 Q. All right. And he says,

24 "We had our call," and referring to Moraine
25 Park. "When I informed him that we would really would want

1 to have an in-house environment that we can perform our
2 proactive development on, David" -- David is with Moraine
3 park; right?

4 A. Yes.

5 Q. Okay. " -- was still firm in his perception that
6 they can't extend their software for use outside of their
7 location."

8 So what you're talking about here with the
9 client is saying you want to put their software on your
10 system, Rimini's system, and he was firm in his perception
11 that they can't extend their software for use outside of
12 their location?

13 A. Right. So we did a remote access to them, we didn't
14 take their software.

15 Q. But first you pushed back; right?

16 A. Sure.

17 Q. You said -- Mr. Chiu said,

18 "I tried to clarify for him that this is simply
19 another development environment they are entitled to have,
20 but he viewed this as a legal requirement in their
21 agreement that limits the use of the software outside of
22 their location."

23 The provision that Mr. Chiu is referring to
24 there that limits the use of software outside of their
25 location, that was another standard provision of the

1 PeopleSoft agreements; right?

2 A. There was a term in there called facility which we
3 interpreted to be a much wider -- including all of the
4 service providers in their systems.

5 Q. All right. And it was a standard provision; right?

6 A. I believe most contracts had that kind of language.
7 I didn't remember it early on, but, yes.

8 Q. It's a standard provision in the Siebel contracts
9 too, right, that you -- that -- a legal requirement that
10 limited the use of the software outside of the customer's
11 location?

12 A. I don't believe so.

13 Q. Okay. It was a standard provision in the JDE
14 contracts, wasn't it?

15 A. I don't believe so that I remember.

16 Q. The Abilene School District, Plaintiffs' Exhibit 29?

17 A. I'm at 29.

18 Q. All right. This is you writing to one of your
19 clients at the Abilene School District, and you say that --
20 ah, there we are.

21 "We help you order" -- maybe you remember seeing
22 this in opening statement.

23 "We help you order two copies of the current
24 release of products, one for your archives and one you can
25 ship to your selected support vendor to build a test and

1 development environment just for Abilene," the independent
2 school district.

3 Now, you built a test and development
4 environment for Abilene Independent School District; right?

5 A. If they had customizations, we probably did.

6 Q. You didn't just use it for them, did you, you cloned
7 it for other people?

8 A. I think we've already established that we cloned as
9 a part of our process when we created new environments,
10 yes.

11 Q. Now, in opening statement, your counsel talked about
12 a letter you received in September 2005 from Oracle that
13 said "we hereby" -- from Siebel that said "we hereby demand
14 that Rimini Street immediately cease its wrongful
15 activities."

16 Do you remember that?

17 A. It was about a five-page letter. I'm happy to go
18 through it, yes.

19 Q. Right. Well, I mean, he put it up on the screen and
20 highlighted the sentence, "we hereby demand that Rimini
21 Street immediately cease it's wrongful activities," do you
22 remember that?

23 A. Yes, except we hadn't started anything yet.

24 Q. Now, after that, you told customers -- after you got
25 that letter, you told customers that you didn't think you

1 faced any threat of litigation from Oracle; right?

2 A. We responded to the letter, our lawyers responded to
3 each point in the letter in detail.

4 Q. I'm not asking about your response to the letter.
5 Let me ask the question again.

6 After you got that letter from Siebel that your
7 counsel showed to everybody, you talked to customers about
8 whether Oracle was threatening lawsuits against you; right?

9 A. Yeah, there was no threat of a lawsuit that I
10 recollect.

11 Q. Right. So when you got the letter in September 2005
12 that said "we hereby the demand that Rimini Street
13 immediately cease its wrongful activities," you didn't
14 consider that a threat of a lawsuit from Oracle; right?

15 A. No. We responded to every point in the letter in
16 detail.

17 Q. And you told -- so you -- so after that letter you
18 didn't feel like there was any threat of a lawsuit from
19 Oracle, you were comfortable about that?

20 A. Well, one, we hadn't done anything so we --

21 Q. I'm just --

22 A. So, no, we did not feel there was a threat at that
23 moment that I recollect.

24 Q. And you told customers that Rimini did not face any
25 threat of litigation from Oracle and, in particular, after

1 that TomorrowNow lawsuit was filed by Oracle?

2 A. Well, you're talking about a four year difference
3 between the start of the company and I believe that lawsuit
4 was starting with TomorrowNow.

5 Q. Correct. Let me put the question better.

6 After Oracle filed the suit against TomorrowNow,
7 some of your customers asked have they threatened any
8 lawsuit against you?

9 A. And the answer was no, we did not feel that there
10 was a threat. Yes.

11 Q. Right. So, in fact, you said we -- you told, for
12 example, customers such as Young who you talked to the jury
13 about, we have never been threatened by Oracle for the work
14 we do?

15 A. That's correct. There was no threat of litigation
16 that had come our way, just a bunch of letters back and
17 forth and sparing.

18 Q. All that happened was there was a bunch of letters,
19 and you never felt any actual threat from Oracle. Is that
20 right?

21 A. We're talking years and years of letters. So, no,
22 it just seemed to be part of the landscape for us.

23 Q. Okay. We talked -- there's been talk in this case
24 about automated downloading. Automated downloading are
25 automated tools that Rimini has employed over time to

1 download from Oracle's website; right?

2 A. Yes.

3 Q. And you used automated downloading tools with some
4 of the first clients you signed?

5 A. We used it -- again, if you want to be more precise
6 between Siebel, PeopleSoft, JD Edwards, they were different
7 methodologies.

8 We started with Siebel product, then added
9 PeopleSoft and JD Edwards a year later.

10 So, yes, each one of those had their own
11 automated process for downloading.

12 Q. All right. And it was you who made the decision it
13 was okay to log on to and download from Oracle websites
14 using automated tools; right?

15 A. Yes.

16 Q. And you made the decision to approve the use of
17 automated tools to download materials from Oracle's
18 website?

19 A. Yes.

20 Q. All right. And you, in fact, sometimes as you
21 passed screens, computer screens in the office, you could
22 see employees running automated downloading tools on Oracle
23 websites?

24 A. Yes, as I passed by, yes. I didn't do it myself.

25 Q. Okay. And some of the -- some of the automated

1 downloading was used -- was done with the user name Seth
2 plus Ravin. Are you aware of that?

3 A. No, I heard about it in the litigation. I guess
4 somebody used my name in downloading, yes.

5 Q. Okay. So -- and is it your testimony that you had
6 no knowledge that your name was being used as a user name
7 for this?

8 A. No, they would pick user names. I don't know why
9 they picked my name.

10 Q. And then there came a time when you learned that
11 Oracle had changed the terms of use for Customer
12 Connection, the website that we talked about.

13 A. Yes, right after the TomorrowNow lawsuit was
14 launched, yes.

15 Q. Well, your counsel said in opening statement that
16 the terms of use were changed because of what Rimini Street
17 was doing.

18 You would agree with me that the terms of use
19 were changed because of what TomorrowNow was doing;
20 correct?

21 A. I don't know for a fact why Oracle changed it. I
22 just simply said they changed after the litigation began
23 with TomorrowNow.

24 Q. Right. So while the statement was made that we --
25 that Oracle changed its terms of use in order to do

1 something to Rimini, the terms of use were changed right
2 after the TomorrowNow lawsuit was filed; is that right?

3 A. Yes. I did get a letter back from Oracle relating
4 to it, so I do have insight as to what Oracle said the
5 reason was.

6 Q. All right. Let's look at Exhibit 20?

7 A. Okay. I'm there.

8 Q. This is an email from Mr. Chiu, and he says down
9 below, "Seth left me a voicemail that he's reviewing and
10 will get back to us."

11 And then what were you reviewing? We turn the
12 page. On the next page, very small print, make that
13 bigger.

14 "Oracle has updated their terms of use for
15 Customer Connection, please reference the third paragraph
16 in the introduction paragraph below."

17 So let's go to the next page and go to the third
18 paragraph.

19 MR. ISAACSON: It's the third paragraph on the
20 introduction, Matt.

21 THE WITNESS: Yes.

22 MR. ISAACSON: Make it bigger.

23 BY MR. ISAACSON:

24 Q. All right. And it says halfway through, "You will
25 agree" -- wait. No. Yes.

1 "You agree that you will not access or use
2 Customer Connection in any manner that could damage,
3 disable, overburden, impair or otherwise result in
4 unauthorized access to, or interference with, the proper
5 functioning of any Oracle accounts, systems, or networks."

6 And then it says,

7 "For example, you may not use any software
8 routines commonly known as robots, spiders, scrapers, or
9 any other automated means, to access Customer Connection,
10 or any other Oracle accounts, systems or networks."

11 Now, at the time these terms of use came into
12 existence, you were using automated means to download
13 material from Customer Connection; correct?

14 A. Yes.

15 Q. And after you learned of these terms of use, you
16 continued to authorize automated downloading from Customer
17 Connection; right?

18 A. Yes, I made the decision to continue to use the
19 automated terms despite those changes.

20 Q. Right. And you knew it was against the rules that
21 had been set forth in the terms of use, but, as you said,
22 you continued to do it.

23 And you -- you also increased the amount of
24 automated downloading, didn't you, using many -- several
25 multiple -- several virtual machines at the same time using

1 software tools to download from Customer Connection; right?

2 A. Well, we had so many new customers coming over that,
3 yes, we had set up multiple machines to do the download.
4 So, yes, the volume would have naturally increased with the
5 number of customers coming over.

6 Q. Right. And did you see the chart I showed in
7 opening statement to track what was happening at one of the
8 sites, and how your automatic search requests were higher
9 than all the other requests by all the other Oracle
10 customers combined?

11 That was you who authorized that; right?

12 There it is. Thank you, Matt.

13 A. Yes. We had a lot of customers who were coming over
14 to Rimini Street, and that was a lot of files they were
15 entitled to.

16 Q. And the reason that you wanted these automated
17 downloads is because manual downloads weren't going to get
18 the job done for you; right?

19 A. Well, we actually switched to manual downloading.
20 So we did switch that, yes.

21 Q. You weren't going to be able to run your business
22 during this time period with manual downloading; right?

23 A. Well, that's what we thought, but when you switch to
24 manual and once we figured out how to do it with larger
25 volumes of people, yes.

1 MR. ISAACSON: My question was about what was
2 happening at the time so I would move to strike the answer
3 about what comes later, Your Honor.

4 THE COURT: The answer is nonresponsive and will
5 be stricken.

6 MR. ISAACSON: Would you please look at 454, PTX
7 454, which is preadmitted.

8 THE WITNESS: Yes, I'm at 454.

9 BY MR. ISAACSON:

10 Q. All right. And you're copied on this email in
11 June 2007. It's about manual download time?

12 A. Yes.

13 Q. And if we go to the chart down at the bottom?

14 A. Yes.

15 Q. "Seth, this table helps identify how long it would
16 take to manually download all updates and fixes a client is
17 licensed for."

18 And then you have in the right column work days
19 to complete download manually?

20 A. Yes.

21 Q. And you can see for each of these clients 53 days,
22 12 days, 81, 115. All of those days would be required if
23 you shifted to manual downloading. That's why you were
24 using the automated downloading; right?

25 A. Yes. It was going to be much more time consuming in

1 this terms of labor to do it manually.

2 Q. And, in fact, it's a little bit more than that,
3 wasn't it?

4 MR. ISAACSON: Plaintiffs' Exhibit 21, which has
5 been preadmitted.

6 BY MR. ISAACSON:

7 Q. If we can look at -- on page 3.

8 This is Mr. Lester talking to Mr. Shay, your
9 cofounder. Mr. Shay is saying to Mr. Lester in point 4.
10 He says in the middle,

11 "Essentially, with 96 to 112 labor hours
12 required for the bare minimum basics, it would seem
13 physically impracticable, if time cost-prohibitive to use
14 manual methods to download 'all available and properly
15 licensed fixes and updates' that a licensed client is
16 legally entitled to receive."

17 Internally you were saying this wasn't just
18 expensive, it was physically impractical and was cost
19 prohibitive?

20 A. Yes, and that's why we didn't get everything for our
21 client because, using a manual process, there's just no way
22 to get everything. It's far too time consuming and costly.

23 Q. All right. And you gave at 27, Plaintiffs'
24 Exhibit 27 -- Plaintiffs' Exhibit 27 is the direction from
25 you. At the bottom, you're writing to Mr. Chiu in

1 July 5th, 2007.

2 You say,

3 "Please use our automation tools to complete the
4 downloads as it is not feasible to complete the entire
5 downloads without such tools and processes."

6 You said it wasn't feasible to do this manually
7 and so you directed that these automation tools be applied
8 against the Oracle websites; right?

9 A. Yes. And at the time, because of where we were, we
10 hadn't yet developed the manual process.

11 MR. ISAACSON: I would move to strike the back
12 half of his answer after yes, Your Honor.

13 THE COURT: The motion will be granted and the
14 jury will be instructed to disregard the nonresponsive
15 portion of the answer.

16 BY MR. ISAACSON:

17 Q. All right. And Mr. Chiu responded, "we'll get the
18 ball rolling right away," and you went forward with the
19 automated downloading?

20 A. Yes.

21 MR. ISAACSON: So, Your Honor, at this point,
22 I've got some left, not a great deal. I would benefit by a
23 break for the afternoon if that's fine so that I can just
24 organize the remaining materials and move through it
25 efficiently.

1 THE COURT: Well, we're very close to our day
2 end, and that's a reasonable request which I will agree to.

3 Ladies and gentlemen, that will conclude our
4 testimony and evidence for today.

5 Once again, I'm going to go through the
6 admonishments with you, because I'm sure you can sense that
7 it's so important that the jury respect and honor these
8 admonishments because there is obviously a great amount of
9 everything that goes into these trials, and I know it's
10 obvious to you. So please bear with me while I do it
11 again.

12 I remind you that during the recess, you're not
13 to discuss the case with anyone or permit anyone to discuss
14 it with you or in if your presence.

15 This caution includes not discussing the case
16 over the Internet or any form of digital or electronic
17 means, text messaging, e-mails, et cetera.

18 You are not to do any personal research or make
19 any independent investigation concerning this case on your
20 own. That includes not consulting dictionaries, searching
21 the Internet, performing Google searches or anything that
22 would be comparable.

23 It's absolutely important that when the jury
24 decides this case that you all decide it based on the
25 evidence which you all heard in this courtroom.

1 With regard to any notes that you've taken, your
2 notes must be left in the jury room, and I'm sure you've
3 seen that they are protected for your benefit.

4 We'll start tomorrow morning at eight o'clock.
5 And I really do appreciate everyone's timeliness and
6 cooperation. We're moving well.

7 And I thank you for your attention and wish you
8 a pleasant evening. You may step down.

9 COURTROOM ADMINISTRATOR: Please rise.

10 (Jurors exit courtroom at 1:52 p.m.)

11 THE COURT: You can go ahead and step down.

12 Have a seat. Mr. Ravin, you may return to
13 counsel table.

14 THE WITNESS: Thank you.

15 THE COURT: Let's see. I'm probably overlooking
16 something, but I know I still have before me the issue
17 concerning paragraph 60 in plaintiffs' amended complaint as
18 it may have related to paragraph 33 and 34, and the answer
19 filed on behalf of defendants.

20 I think it's clearly germane to 33 and 34, and I
21 have no problem whatsoever with that being referred to as
22 an exhibit, but I leave it in the discretion of counsel
23 regarding how they would want to approach that.

24 I'm not thinking of anything else that I need to
25 address. Is there anything?

1 MR. WEBB: Your Honor, I think on that topic,
2 those specific paragraphs respond to another paragraph
3 where they specifically respond to allegations of the
4 paragraph referring to, for example, such a library.

5 So I think for completeness, we need to have the
6 initial paragraph and the two responding paragraphs.

7 MR. STRAND: I think he just said you got that.

8 THE COURT: You win again.

9 I do appreciate counsel's cooperation. We are
10 moving along well, and I appreciate the professionalism
11 that I see in the courtroom, and I want to thank you for
12 that, and we'll continue on. I'll see you tomorrow
13 morning. I wish you a pleasant evening as well.

14 COURTROOM ADMINISTRATOR: Please rise.

15 (The proceedings adjourned at 1:55 p.m.)

16 * * *

17

18

19

20

21

22

23

24

25

-o0o-

I certify that the foregoing is a correct
transcript from the record of proceedings
in the above-entitled matter.



9/17/15

Donna Davidson, RDR, CRR, CCR #318
Official Reporter

Date

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

PLAINTIFF'S WITNESSES:	PAGE
SETH RAVIN	
Direct Examination resumed	271
By Mr. Isaacson	

E X H I B I T S

PLAINTIFF'S	ADMITTED
23	458
30	406
204	307
214	336
318, page 1	318
396	429
465	469
554	310
604	465
619	428
1587	426
3511	305
4936	456
4937	426
5355	348
5455	447
5459	433